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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 124.

SUSIE M. KERR, ROSA L. KERR, AND JOSEPH B. KERR, EXECUTORS OF WILLIAM P. KERR, DECEASED, APPELLANTS.

vs.

THE SOUTH PARK COMMISSIONERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 16, 1882.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of the United States circuit court for the seventh circuit, and the Hon. Henry W. Blodgett, district judge of the United States for said northern district of Illinois, on Saturday, the twenty-sixth day of August, in the July term of said court, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and seventh year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

THE SOUTH PARK COMMISSIONERS
vs.
SUSIE M. KERR, ROSA L. KERR, and JOSEPH B. KERR, Executors and Devisees of William P. Kerr, Deceased, and Others. } In Chancery. Bill.

And

CHARLES B. PHILLIPS
vs.
THE SOUTH PARK COMMISSIONERS *et al.* } Cross-Bill.

And

2 JOHN T. BENNETT
vs.
THE SOUTH PARK COMMISSIONERS *et al.* } Cross-Bill.

Be it remembered that on the twenty-eighth day of October, A. D. 1880, there was filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a bill, answer of F. A. Ingalls, petition for removal, and order (being part of a transcript from the circuit court of Cook county, Illinois, which was filed in said clerk's office on said twenty-eighth day of October, A. D. 1880) in said entitled cause, which said bill, answer, petition, and order are, respectively, in the words and figures following, to wit:

3 UNITED STATES OF AMERICA, } *ss:*
State of Illinois, Cook County, }

Pleas before the Honorable William H. Barnum, one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday, being the 18th day, of October, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the 105th.

Present: Honorable William H. Barnum, one of the judges of the circuit court of Cook county, State of Illinois; L. L. Mills, State's attorney; John Hoffman, sheriff.

Attest: JACOB GROSS, *Clerk.*

Be it remembered that heretofore, to wit, on the 9th day of September, A. D. 1880, the South Park Commissioners, by Jos. T. Bonfield, Esq., its solicitor, filed in said court its certain bill of complaint, and caused to be issued out of and under the seal of said court the people's writ of summons, directed to the sheriff of Cook county to execute, which said bill of complaint and writ,
4 together with the sheriff's return thereon endorsed, are in the words and figures following, to wit:

To the honorable the judges of the circuit court of Cook county, Illinois, in chancery sitting:

The South Park Commissioners, complainant herein, respectfully shows unto your honors, that it is a municipal corporation situated in said county of Cook, and organized and existing under the laws of the State of Illinois.

That your orator became incorporated under and by virtue of an act entitled "An act to provide for the location and maintenance of a park for the towns of South Chicago, Hyde Park, and Lake," approved and in force February 24th, 1869, and that by said act the commissioners of your orator were authorized and empowered to, and required within ninety days after the organization of your orator under said act, or as soon thereafter as practicable, *to* select for park purposes the following described lands, situated in the towns of South Chicago, Hyde Park, and Lake, in Cook county, to wit:
5 Commencing at the southwest corner of Fifty-first street and Cottage Grove avenue, running thence south along the west side of Cottage Grove avenue to the south line of Fifty-ninth street; thence east along the south line of Fifty-ninth street to the east line of Hyde Park avenue; thence north on Hyde Park avenue to Fifty-sixth street; thence east along the south line of Fifty-sixth street to Lake Michigan; thence southerly along the shore of the lake to a point due east of the centre of section twenty-four (24), in township thirty-eight (38) north, range fourteen (14) east; thence west through the centre of said section twenty-four to Hyde Park avenue; thence north on the east line of Hyde Park avenue to the north line of Sixtieth street, so called; thence west on the north line of Sixtieth street, so called, to Kankakee avenue; thence north on the east line of Kankakee avenue to Fifty-first street; thence east to the place of beginning; also a piece of land commencing on the southeast corner of Kankakee avenue and Fifty-fifth street, running thence west a strip two hundred (200) feet wide adjoining the north line
6 of Fifty-fifth street along said Fifty-fifth street to the line between ranges thirteen (13) and fourteen (14) east; thence northeast of and adjoining said line a strip two hundred (200) feet wide to the Illinois and Michigan canal; also a parcel of land beginning at the southwest corner of Douglas Place and Kankakee avenue, running thence south a strip of land one hundred and thirty-two (132) feet wide along the west side of said Kankakee avenue to a point one hundred and fifty (150) feet south of the south line of Fifty-first street; also a strip of land commencing at the intersection of Cottage Grove avenue and Fifty-first street, running thence east

one hundred (100) feet in width on each side of the centre line of Fifty-first street to a point one hundred (100) feet east of the centre line of Drexel avenue; also a strip of land extending north from the intersection of Fifty-first street with Drexel avenue one hundred (100) feet in width on each side of the centre line of said avenue to the north line of Forty-third street; thence northerly a strip of land two hundred (200) feet wide until it meets or intersects with Elm
7 street in Cleaverville; thence northerly along said Elm street two hundred feet in width west to the east line of said street to its intersections with Oakwood avenue; which said lands, when acquired by your orator as provided by said act, were to be held, managed, and controlled as a public park for the recreation, health, and benefit of the public, and free to all persons forever, subject to necessary rules and regulations as should be adopted for the well ordering and government of the same.

And your orator shows that under the provisions of said act and subsequent acts amendatory thereof the territory above described as selected and set apart for park purposes have been enlarged, and that your orator did in apt time, and as required by said act creating your orator, select the lands above described for the purposes required and declared by said act.

And your orator represents unto your honors that, to wit, November 21st, 1879, at its regular meeting held on that day, your
8 orator adopted the following resolution, to wit:

"Resolved, That the president of this board is hereby authorized to make such settlement and adjustment of the litigation regarding the south half of fractional sect. 13, 38, 14, and such purchase of the title thereto as in his judgment may be advisable, and for that purpose to draw from the treasurer of this commission a sum not exceeding the sum of ninety thousand dollars, before reporting the same to this board, and that the auditor is hereby instructed to sign the necessary warrant for said sum of money, or so much thereof as called for."

That in pursuance thereof, to wit, November 29, 1879, and February 26, 1880, respectively, two warrants for the said aggregate sum of $90,000, duly executed and signed by said auditor, were delivered to James Morgan, the then president of said South Park Commissioners, and the money was duly paid over to said Morgan thereon.

That, to wit, March 2nd, 1880, *to* term of office of said James Morgan as member of said Board of South Park Commis-
9 sioners and as president of the same expired.

That on, to wit, March 15th, 1880, the said James Morgan handed over to the secretary of said South Park Commissioners, and took his receipt therefor, the following-described documents, to wit:

1st. A trust deed, dated November 26th, 1872, from Daniel P. Rhodes to Daniel Jones conveying thereby the undivided quarter (¼) of the south half (½) of fractional section 13, town. 38 north, range 14 east of the 3rd p. m., except the north one-third of lot 3 and lots 9, 10, 11, and 15 and 16 in Philips' subdivision of the west part of said half section, to secure the payment of two promissory notes, of even date therewith, made by Thomas S. Dobbins, payable to his

own order, each for the principal sum of $25,000, bearing interest at 8% per annum, and due in two years from June 1st, 1872, a copy of which said trust deed, with the endorsements thereon, is hereto annexed, marked "Exhibit A" and made a part of this bill of complaint.

2nd. A note of Thomas S. Dobbins, dated November 26th,
10 1872, for the principal sum of $25,000, due June 1st, 1874, payable to his own order, and endorsed by said Thomas S. Dobbins and John C. Dunlevy, to which said note was attached a certain judgment note of Wilson K. Nixon, dated May 14th, 1879, payable sixty days after date, in the principal sum of $30,325, to the National Bank of Illinois, a copy of which said notes, with the endorsements thereon respectively, is hereto attached, marked "Exhibit B" and made a part of this bill of complaint.

3rd. A note of Thomas S. Dobbins, dated November 26th, 1872, for the principal sum of $25,000, due June 1st, 1874, payable to his own order, and endorsed by said Thomas S. Dobbins and John C. Dunlevy, to which note was attached a judgment note of Llewellyn Curry, dated May 15th, 1879, payable sixty days after date, in the principal sum of $30,325, to the National Bank of Illinois, copies of which said notes, together with the endorsements thereon respectively, are hereto attached, marked "Exhibit C" and made a part of this bill of complaint.

11 4th. A note of Llewellyn Curry, dated February 26th, 1880, payable to his own order on demand, in the sum of $72,000, and endorsed by him in blank.

A copy whereof with the endorsements thereon is hereto attached, marked "Exhibit D" and made a part of this bill of complaint.

5th. A judgment note of John I. Bennett, dated November 14th, 1879, payable to the National Bank of Illinois, on demand, in the principal sum of $21,000, bearing interest after demand at 8% per annum.

A copy whereof with the endorsements thereon is hereto attached, marked "Exhibit E" and made a part hereof.

6th. A paper signed by Fred A. Ingalls, declaring that he holds the title by quit-claim deed, dated November 12th, 1879, from Mary C. Dobbins and Thomas S. Dobbins, to the south half ($\frac{1}{2}$) of fractional section 13, township 38 north, range 14 east, of the 3rd P. M., in trust to secure the payment to the National Bank of Illinois of a note of John J. Bennett to said bank for $21,000 due on
12 demand; on the reverse side of which said paper is another statement signed by said Fred A. Ingalls, declaring that he holds the title derived through certain deeds from Robert E. Jenkins, receiver and assignee of the estate of Thomas S. Dobbins, to Frank I. Bennett, and from Frank I. Bennett; all covering the interest of said Dobbins in the south half ($\frac{1}{2}$) of fractional section 13, 38. 14; first, to secure the payment of the within-named sum of $21,000; and, second, to secure to the holder thereof the payment of $7,200, evidenced by a note of Llewellyn Curry, dated February 26th, 1880.

A copy of which said paper is hereto attacked, marked "Exhibit F" and made a part of this bill of complaint.

That on or about the 15th day of April, 1880, the secretary of said Board of South Park Commissioners, under instructions from said board, directed and sent a letter to said James Morgan, asking whether the securities and deeds referred to are held for the benefit of the park authorities, and are paid for by the park funds; why, if so held
13 and paid for, does the title not run to the park commissioners instead of to trustees? What do the notes of Nixon, Curry and Bennett represent, and have the park authorities recourse against them on their notes in the event the title so held in trust does not satisfy the park advances? Why do the deeds from Jenkins run to Bennett? Did he purchase for himself or for the park authorities? How were the Jenkins deeds procured, and what was paid for them ond for the quit-claim deed from Mary C. Dobbins and Thomas T. Dobbins? Why were deeds procured from Mary C. Dobbins and also from her husband's assignee and receiver, or was the deed from Mary C. Dobbins simply for her dower? In what order of time were the purchases and instruments made, to wit, the deeds from Jenkins, from Mary C. Dobbins, and Thomas S. Dobbins, and the purchase of the Curry and Nixon notes secured by the Dobbins trust deed and notes as collaterals? Do these deeds and securities convey or secure a good title to the undivided ¼ of
14 the S. ½ of fractional section- 13, 38, 14, except the north ⅓ of lot 3 and lots 9, 10, 11, 15, and 16 in Philips' subdivision of the west part of said half section, the property described in the trust deed, and is that all the property secured or conveyed? What was its value when taken possession of by the park authorities? What is now necessary to be done in order to perfect the title in the South Park Commissioners?

And your orator further represents unto your honors that its said secretary never received any answer from said Morgan to said communication, nor has your orator, nor any of its officers, nor any one for it, ever received any communication, statement, or report from said Morgan of his actions and doings in the premises, either as to the disposition which he made of said sum of $90,000, or of the nature, extent, effect, or value of any conveyances, deeds, or securities received by him in pursuance of the resolution of your orator above set forth, although the said communication from your orator was duly received by said Morgan, nor has the said Fred A.
15 Ingalls, although requested so to do, explained or stated to your orator, or to any one for it, the nature of his said trust, or the relation to whom or for whom in which he stands therein, nor anything pertaining thereto, but neglects and refuses to state the same to your orator.

And your orator, finding nothing in said declarations of trusts by said Ingalls indicating that the same were for the benefit or behoof of your orator, by its regularly appointed attorney directed to said Ingalls the following communication, to wit:

"CHICAGO, *June* 30, 1880.

"Fred. A. Ingalls, Esq.

"DEAR SIR: I have been requested by a resolution of the Board of South Park Commissioners to take such steps as in my judgment may seem advisable to perfect in the South Park Commissioners the title to that portion of the Philips tract known as the Dobbins interest. The land is situated in the east of the South parks, and you are, I understand, the custodian of certain deeds from Mary
16 C. and Thomas S. Dobbins and Robert E. Jenkins, as receiver and assignee of Thomas S. Dobbins, conveying to you the S. ½ of fr'c. sec-. 13, 38, 14, in trust for certain purposes. It does not appear upon the face of the declaration in trust signed by you and in possession of the South Park Commissioners that the title is held by you for the benefit of that corporation, though such I understand to be the fact. Will you please furnish me with the copies of the deeds referred to, and with the facts connected with the transactions, as far as you know of your own knowledge, and whether you are now willing and in position to convey said property to the South Park Commissioners.

"Respectfully, JOS. F. BONFIELD."

And your orator represents that no answer whatever was ever received by said Bondfield nor your orator, nor any one for it, to said communication.

And your orator, having caused such information in the premises as could be obtained to be collected, submits to this honorable court, on information and belief, and charges the fact to be that the
17 said sum of $9,000 paid over by your orator to said [illegible]nes Morgan was invested by said Morgan, not only in pu[illegible]asing said trust deed and notes secured thereby, bearing date November 26th, 1872, but also whatever interest the said Thomas S. Dobbins or any of his assigns had in and to said south ½ of fractional section 13, 38, 14, except the north ⅓ of lot 3 and lots 9, 10, 11, 15, and 16 in Philips' subdivision of the west part of said half section prior to the execution of the trust deed from Daniel P. Rhodes to Daniel Jones, dated November 26th, 1872, as aforesaid, or which said Dobbins or his said assigns acquired subsequent thereto; and that the deeds, conveyances, and securities so purchased or acquired are the property of or are held in trust for your orator by the person or persons named as grantee or grantees or payee in said deeds, conveyances, and securities, and each of them, but that the exact nature, extent, and effect of the same is not known to your orator.

And your orator further represents that it is informed, and charges the fact to be, that the said John I. Bennett and the said Llewellyn Curry and Wilson H. Nixon, and each of them, deny any and
18 all liability whatever in, through, or under the notes or securities by them respectively signed as aforesaid.

And your orator further shows unto your honors that the said south half of fractional section 13, T. 38 N., 14 E., lies wholly within the territory hereinbefore described and bounded, as selected by your

orator under and by virtue of said act of the Legislature of the State of Illinois for the purposes in *set* act set forth.

And your orator further shows unto your honors that John C. Dunlevy, Mary C. Dobbins, Thomas S. Dobbins, William P. Kerr, John I. Bennett, Llewellyn Curry, Wilson K. Nixon, Frank I. Bennett, The National Bank of Illinois, and Robert E. Jenkins, assignee and receiver of the estate of Thomas S. Dobbins, Charles B. Phillips, and Elizabeth Ann Phillips, have, or claim to have, some right or interest in the above-described premises, the nature and extent of which is unknown to your orator:

Now, therefore, your orator, being without remedy in the premises, except in a court of equity, prays your honors that the
19 said James Morgan, Fred. A. Ingalls, John C. Dunlevy, Mary C. Dobbins, Thomas S. Dobbins, William P. Kerr, John I. Bennett, Llewellyn Curry, Wilson K. Nixon, Frank I. Bennett, The National Bank of Illinois, Robert E. Jenkins, assignee and receiver of the estate of Thomas S. Dobbins, Charles B. Phillips, and Elizabeth Ann Phillips, be made parties defendant to this bill of complaint, and that they make full, true, perfect, and complete answers hereto respectively, but not under oath (their answers under oath being hereby expressly waived), and that they and each of them bring into this honorable court whatever papers, instruments, or documents in their possession or control, or in the possession or control of either of them, touching or relating to the matters herein set forth, and that they respectively disclose to your honors and your orator all their doings in the premises, and any information relative to the title to the said south half of fractional section 13, 38, 14, pertinent to your orator's interest therein.

And that the said James Morgan and Fred A. Ingalls may
20 especially answer and set forth—

First. Whether the securities and deeds above referred to are held for the benefit of the park authorities and are paid for by park funds.

Second. Why, if so held and paid for, does the title not run to the park commissioners instead of to trustees.

Third. What do the notes of Nixon, Curry, and Bennett represent, and have the park authorities recourse against them on their notes in the event the title so held in trust does not satisfy the park advances?

Fourth. Why do the deeds from Jenkins run to Bennett? Did he purchase for himself or for the park authorities?

Fifth. How were the Jenkins deeds procured, and what was paid for them and for the quit-claim deed from Mary C. Dobbins and Thomas L. Dobbins?

Sixth. Why were deeds procured from Mary C. Dobbins and also from her husband's assignee and receiver, or was the deed from Mary C. Dobbins simply for her dower?

21 Seventh. In what order of time were the purchases and instruments made, to wit: the deeds from Jenkins, from Mary C. and Thomas S. Dobbins, and the purchase of the Curry and Nixon notes, secured by the Dobbins trust deed and notes as collateral?

Eighth. Do these deeds and securities convey or secure a good title to the undivided ¼ of the S. ½ of frc. sec. 13, T. 38 N., R. 14 E., except the N. ⅓ of lot 3, and lots 9, 10, 11, 15, and 16 in Phillips' subdivision of the west part of said ½ section, the property described in the trust deed, and is that all the property secured or conveyed?

Ninth. What was paid for the property so secured or conveyed, and for the securities deposited by said Morgan with the secretary of your orator as aforesaid? What further, if any, steps have been taken *is* now necessary to be done than these indicated by the document heretofore described to you or either of you to perfect the title in the South Park Commissioners?

And that if, upon a final hearing hereof, your honors shall
22 find, as your orator claims and alleges, that your orator is beneficially, though not nominally, entitled to any of the deeds, conveyances, or securities mentioned herein or which may be disclosed upon the trial hereof, your honors shall decree an absolute conveyance or conveyances of the same to your orator by the person, persons, or corporation now holding the same, and that your orator may have such other or further relief in the premises as the nature of this cause shall require or to your honors shall seem meet.

May it please your honors to grant unto your orator the people's writ of summons, directed to the sheriff of Cook county, commanding him to summon the said James Morgan, Fred. A. Ingalls, John C. Dunlevy, Mary C. Dobbins, Thomas S. Dobbins, William P. Kerr, John I. Bennett, Llewellyn Curry, Wilson K. Nixon, Frank I. Bennett, The National Bank of Illinois, Robert E. Jenkins, assignee and receiver of the estate of Thomas S. Dobbins, Charles B. Phillips, and
Elizabeth Ann Phillips, to be and appear before this hon-
23 orable court on a certain day therein named, and then and there full, true, perfect, and complete answer make to this, your orator's, bill of complaint, and to stand to and abide by whatever orders or decrees that may be made herein; and your orator will ever pray, etc.

[CORPORATION SEAL.] SOUTH PARK COMMISSIONERS,
By J. R. WALSH, *President.*
JOS. F. BONFIELD, *Sol.*

Attest: H. W. HARMON,
Secretary B'd South Park Commissioners.

EXHIBIT A.

[On margin:] The name Daniel Jones inserted in place of Henry S. Monroe before the acknowledgment.

This indenture, made this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and seventy-two, between Daniel P. Rhodes, of the city of Cleveland, Ohio, party of the first part, and Daniel Jones, of the city of Chicago, county of Cook, and State of Illinois, party of the second part, as trustee, as hereinafter specified, and in case of the death, absence, or removal from said county of Cook, refusal or inability to act of said party of the

second part, then John B. Drake, of the city of Chicago,
24 shall be, and he is hereby appointed and made successor in trust to said party of the second part, under this deed, for the uses and purposes hereinafter expressed, with same power and authority of said trustee, witnesseth: That whereas T. S. Dobbins has executed his two certain promissory notes, bearing even date herewith, payable to his own order, and by him endorsed and delivered to Wm. P. Kerr, of Glanville, Licking county, Ohio, said notes being for the sum of twenty-five thousand dollars ($25,000) each, bearing 8 per cent. interest, payable semi-annually on the first days of June and December in each year, and due in two years from June 1st, 1872, at the banking house of Tyler, Wrenn & Co., Chicago and which notes were given for part of the purchase-money of the land hereinafter described. And whereas the said party of the first part, desirous of securing the prompt and full payment of the said promissory note and interest that may accrue thereon, in whose hands soever the same may be:

25 Now, therefor-, the said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of one dollar to me in hand paid by the said party of the second part, the receipt whereof is hereby confessed, have and do hereby grant, bargain, sell, and convey unto the said party of the second part, his successor in trust aforesaid, and his and their heirs and assigns all the following described lands and premises situate in the county of Cook and State of Illinois, to wit: The undivided one-fourth part of the south half of fractional section thirteen (13), town. thirty eight (38), range fourteen (14) E., save and except therefrom the north ⅛ of lot 3, and lots 9, 10, and 11 and 15 and sixteen in Phillip's subdivision of the west part of said ½ sec., and being the same interest conveyed by said Kerr to said Rhodes by deed of Oct. 12th, 1872, and for part payment of which said notes were given; to have and to hold the same, together with all and singular the tenements, hereditaments privileges and appurtenances thereunto belonging, to the said party of the second part, his
26 successor in tr-t aforesaid and his and their heirs and assigns, forever.

In trust, nevertheless, that in case of default in the payment of the said promissory notes and interest or any part thereof according to the tenor and effect of said notes, or in case of the breach of any of the covenants or agreements herein mentioned, on the application of the legal holder of said promissory notes, or either of them, to sell and dispose of the said premises, and all the right, title, benefit, — redemption of the said party of the first part, h- heirs and assigns therein, at public auction at the north door of the cou- house, in the city of Chicago, in the State of Illinois, or on said premises or any part thereof as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, three weeks' notice having been previously given of the time and place of such sale by advertisement in the Chicago Legal News or in any newspaper at that time published in said city of Chicago, and to make, execute, and deliver to the purchaser or purchasers at such sale

good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds or avails of such sale, and the purchase-money paid thereon, after first paying all costs of advertising sale and conveyance, including the reasonable fees and commission of said party of the second part, and all other expenses of this trust, including all moneys advanced for insurance, taxes, and other liens or assessments, with interest thereon at ten per cent. per annum, then to pay the principal of said notes, whether due and payable by the terms thereof or not, and interest due on said notes up to the time of such sale, rendering the overplus (if any) unto the said party of the first part, his legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, or through or under said party of the first part, or any of them. And in case of the death of the grantor, Daniel P. Rhodes, aforesaid, and of a foreclosure, as provided in an act of the General Assembly of the State of Illinois, entitled "An act to protect widows and orphans from the sacrifice of their property by sales upon mortgages and trust deeds," approved March 30th, A. D. 1869, upon default and application made to the said party of the second part, or his successors in trust as aforesaid, by any *cestui que trust* under this deed, it shall and may be lawful for the said party of the second part, in his own name or otherwise, by suit in any court of competent jurisdiction, to obtain a decree for the sale and conveyance of the whole or any part of said premises for the purposes herein specified by said party of the second part as such trustee, or as special commissioner under order of court, and out of the proceeds of any such sale to first pay the costs of such suit, including his reasonable charges as solicitor therein, in addition to and besides the costs of advertising, sale, conveyance, and moneys advanced, with interest as above provided, then to pay the amount found by the court to be due and payable upon the indebtedness aforesaid.

And in case of any suit or proceedings at law or in equity, wherein said party of the second part shall be made a party by reason of his trusteeship under this deed, he shall be allowed and paid his reasonable costs, charges, attorney's and solicitor's fees in such suit or proceedings by said party of the first part, and the same shall be a further charge and lien upon said premises under this deed, to be paid out of the proceeds of sale thereof, if not otherwise paid by said party of the first part. And in consideration of the money paid as aforesaid to the said party of the first part, and in order to create a first lien and incumbrance on said premises under this deed for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first part does hereby re-

lease and waive all right under and benefit of the exemption and homestead laws of the State of Illinois in and to the lands and premises aforesaid and the proceeds of sale thereof, and agree to surrender up possession thereof to the purchaser or purchasers at such sale peac-ably on demand.

And the said party of the second [part,] with or without readvertising, is hereby authorized and empowered to postpone or adjourn said sale from time to time at his discretion, and also to sell the said premises *en masse* or in separate parcels, as he may prefer or think best.

And the said Daniel P. Rhodes, for himself and his heirs, executors, and administrators covenants and agrees to and with the said party of the second part, his successors in trust hereinbefore named and their assigns, that at the time of the ensealing and delivery of these presents he is well seized of said premises in fee-simple
31 and has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid.

And in case of the refusal or neglect of the said party of the first part, or either of them, thus to pay taxes, said party of the second part, or his successor in trust, or the holder of said notes or either of them, may pay such taxes, and all moneys thus paid, with interest thereon at ten per cent. per annum, shall become so much additional indebtedness secured by this deed of trust, and to be paid out of the proceeds of sale of the lands and premises aforesaid, if not otherwise paid by said party of the first part, a reconveyance to be made to said party of the first part, his heirs or assigns, at the expense, on full payment of all the indebtedness aforesaid and the performance of the covenants and agreements made herein by the party of the first part.

And it is stipulated and agreed that in case of default in any of said payments of principal or interest according to the tenor
32 and effect of said promissory notes aforesaid, or either of them or any part thereof, or of a breach of any of the covenants or agreements herein by the party of the first part, his executors, administrators, or assigns, then and in that case the whole of said principal sum hereby secured, and the interest thereon to the time of sale, may at once, at the option of the legal holder thereof, become due and payable, and the said premises be sold in the manner and with the same effect as if the said indebtedness had matured.

And the said party of the first part, for himself and his heirs and assigns, does further covenant and agree to and with said party of the second part, his successor in trust aforesaid, and his heirs and their assigns, that in case of a sale and conveyance as aforesaid of said premises, any deed or deeds of conveyance made in pursuance of such sale shall be *preina facis* evidence of the due compliance with and performance of the terms, conditions, and require-
33 ments of this deed of trust by the party of the second part, or his successor in trust aforesad, in advertising and making such sale and conveyance to the extent of the recitals contained in such deed or deeds.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) DAN'L P. RHODES. [SEAL.]

Signed, sealed, and delivered in the presence of—

—— ——.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Charles P. Silva, a notary public in and for and residing in said city in said county, in the State aforesaid, do hereby certify that Daniel P. Rhodes, who is personally known to me as the same person described in and who executed the within trust deed, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the same as his free and voluntary act, for the uses and
34 purposes therein set forth, including the release and waiver of all right under and benefit of the exemption and homestead laws of the State of Illinois in and to the premises therein described, with appurtenances and the proceeds of sale thereof.

Given under my hand and notarial seal this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and seventy-two, at said city of Chicago.

[Seal Charles P. Silva, Notary Public, Chicago, Cook Co., Ill.]

(Signed) CHARLES P. SILVA,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

No. 73066.

This instrument was filed for record in the recorder's office of Cook county aforesaid on the 11 day of Dec., A. D. 1872, at — o'clock — m., and recorded in book 190 of records, on page 483.

Dec. 17th, 1872.

(Signed) JAMES STEWART, *Recorder.*

35 EXHIBIT B.

No. 374 WABASH AVENUE, CHICAGO,
$25,000. *Nov.* 26, 1872.

On or before the first day of June, 1874, I promise to pay to the order of myself twenty-five thousand dollars, with 8 per cent. interest from Dec. 1st next, interest payable semi-annually on the first days of Dec. and June in each year, at the banking-house of Tyler, Wrenn, & Co., in Chicago, value rec'd.

(Signed) T. S. DOBBINS.

Endorsed: 1. Int. rec'd to Dec. 1st, 1872. 2. Int. p'd to June 1, '73. Rec'd five hundred dollars int. Jan. 10, '74. 3. Rec'd five hundred dollars int., Feb. 10, '74. (Signed) T. S. Dobbins. (Signed) Jno. C. Dunlevy. 4. Rec'd int. to June, 1874. July 16.

$30,325. CHICAGO, ILL., *May* 14, 1879.

Sixty days after date I promise to pay the National Bank of Illinois, at Chicago, or order, thirty thousand three hundred and twenty-five dollars, at the banking-house of said bank, value received,
36 with interest at the rate of ten per cent. per annum after maturity, having deposited with said bank as collateral security a certain promissory note for the sum twenty-five thousand $\frac{00}{100}$ dollars, dated Chicago, November 26, 1872, made by T. S. Dobbins, payable to his own order on or before June 1, 1874, at banking-house of Tyler, Wrenn & Co., with 8 per ct. interest, & by s'd Dobbins, indorsed in blank, with interest endorsed paid to June 1, '74, s'd note secured by trust deed on int. div. $\frac{1}{4}$ of S. $\frac{1}{2}$ sec. 13, T. 38, R. 14, made by Dan. P. Rhodes to Dan. A. Jones, John B. Drake, alternate trustee, which said security, or any part thereof, I hereby give the said bank, or its president or cashier, authority to sell on the maturity of this note or at any time thereafter or before, in the event of the said security depreciating in value, at public or private sale, at their discretion, without advertising the same or giving me any notice, and to apply so much of the proceeds thereof to the payment of this note as may be necessary to pay the
37 same, with all interest due thereon, and also to the payment of all expenses attending the sale of said collateral security; and in case the proceeds of the sale of said collateral security shall not cover the principal, interest, and expenses, I promise to pay the deficiency forthwith after such sale, with interest at ten per cent. per annum. And it is hereby agreed and understood that if recourse is had to said collateral, any excess of collateral upon this note shall be applicable to any other note or claim held by said bank against me, and in case of any exchange of or addition to the collateral above named the provisions of this note shall extend to such new or additional collateral.

(Signed) WILSON K. NIXON.

Endorsed:- Without recourse to us. Signed. The National Bank of Illinois, by H. H. Nash, cashier.

EXHIBIT C.

$25,000. CHICAGO, *Nov.* 26, 1872.

On or before the first day of June, 1874, I promise to pay to the order of myself twenty-five thousand dollars, with 8 per ct.
38 interest from Dec. 1st next. interest payable semi-annually, on the first days of Dec. & June in each year, at the banking house of Tyler, Wrenn & Co., in Chicago, value rec'd.

(Signed) T. S. DOBBINS.

Endorsed: Int. rec'd to Dec. 1st, 1872. Int. p'd to June 1, '73. Rec'd five hundred dollars int. Jan. 10, '74. Rec'd five hundred dollars int. Feb. 10, '74. (Signed) T. S. Dobbins. (Signed) Jno. C. Dunlevy. Rec'd int. to June, 1874. July 17.

$30,225. CHICAGO, ILL., *May* 15, 1879.

Sixty days after date I promise to pay to the National Bank of Illinois, at Chicago, or order, thirty thousand two hundred and twenty-five dollars, at the banking-house of said bank, value received, with interest at the rate of ten per cent. per annum after maturity, having deposited with said bank as collateral security one note of $25,000, dated Chicago, Nov. 26, 1872, made by T. S. Dobbins, payable to his own order
39 on or before June 1, 1874, at the banking-house [of] Tyler, Wrenn & Co., Chicago, with 8 per cent. interest, and by said Dobbins endorsed in blank, with interest endorsed paid to June, 1874, said notes being secured by trust deed on the undivided quarter of S. ½ of sec. 13, T. 38, R. 14, made by Daniel P. Rhodes to Daniel A. Jones, John B. Drake, alternate trustee, which said security or any part thereof I hereby give the said bank, or its president or cashier, authority to sell on the maturity of this note, or at any time thereafter or before, in the event of said security depreciating in value, at public or private sale, at their discretion, without advertising the same or giving me any notice, and to apply so much of the proceeds thereof to the payment of this note as may be necessary to pay the same, with all interest due thereon; and also to the payment of all expenses attending the sale of said collateral security; and in case the proceeds of the sale of said collateral security shall not cover the principal, interest, and
40 expenses, I promise to pay the deficiency forthwith after such sale, with interest at ten per cent. per annum.

And it is hereby agreed and understood that if recourse is had to said collateral, any excess of collateral upon this note shall be applicable to any other note or claim held by said bank against me, and in case of any exchange of or addition to the collateral above named the provisions of this note shall extend to such new or additional collateral.

(Signed) LLEWELLYN CURRY.

Endorsed: Without recourse to us. (Signed) The National Bank of Illinois, by H. H. Nash, cashier.

"EXHIBIT D."

$72.00. CHICAGO, *February 26th*, 1880.

On demand after date I promise to pay to my own order seventy-two hundred dollars at National Bank of Illinois, value rec'd. No. —. Due.

(Signed) LLEWELLYN CURRY.

41 "EXHIBIT E."

$21,000. CHICAGO, ILL., *November* 14, 1879.

On demand after date I promise to pay the National Bank of Illinois at Chicago, or order, twenty-one thousand dollars, at the banking house of said bank, value received, with interest at the rate of eight per cent. per annum after demand.

(Signed) JOHN I. BENNETT.

Know all men by these presents that whereas I, the subscriber, am justly indebted to the National Bank of Illinois at Chicago upon a certain promissory note, bearing even date herewith, for the sum of twenty-one thousand dollars, with interest at the rate of eight per cent. per annum after demand, and due on demand after date:

Now, therefore, in consideration of the premises, I do hereby make, constitute, and appoint W. C. Grant, or any attorney of any court of record, to be my true and lawful attorney, irrevocably for me and in my name, place, and stead to appear in any court of record, in term time or in vacation, in any of the States or Territories of
42 the United States, at any time after the date hereof, to waive the service of process and confess a judgment in favor of the National Bank of Illinois at Chicago, or their assigns or assignees, upon the said note, and interest thereon to the day of the entry of said judgment, together with the costs and usual attorney's fees; and also to file a *cognovit* for the amount thereof with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up of said judgment or issuing the execution thereon; and also to waive all benefit or advantage to which — may be entitled by virtue of any homestead or other exemption law now or hereafter in force in this State or any other State or Territory where judgment may be entered by virtue hereof, hereby ratifying and confirming all that my said attorney may do by virtue hereof.

Witness my hand and seal this 14th day of November, A. D. 1879.

(Signed) JOHN I. BENNETT. [SEAL.]

43 In presence of—

——— ———.

Endorsed: Without recourse to us. (Signed) The National Bank of Illinois, by H. H. Nash, cashier.

"EXHIBIT F."

Know all men by these presents that I, Fred. A. Ingalls, of the city of Chicago, Illinois, do hold the title by quit-claim deed, dated November 12th, 1879, from Mary C. Dobbins and Thomas T. Dobbins, her husband, to the south half of fractional section thirteen (13), township thirty-eight north, range fourteen (14) east, of the 3 P. M., in trust to secure the payment to the National Bank of Illinois a note of John I. Bennett to said bank for ($21,000) twenty-one thousand dollars, due on demand, to bear eight per cent. per annum interest after demand; and whatever interest is conveyed to me by said deed is held for the security of said sum specified in said note, in trust for said bank as the first security for repayment of said money on said premises.

Chicago, November 14th, 1879.

(Signed) FRED. A. INGALLS. [SEAL.]

44 Witness:

(Signed) JERE'H LEAMING.

I also hold in trust the title derived through the following-described deeds, viz: Deed from Robert E. Jenkins, receiver of estate of Thomas T. Dobbins, in case [wherein] Morris R. Hunt is complainant and said Dobbins *et al.* are defendants, in U. S. circuit court for northern dist. of Illinois; Robert E. Jenkins, assignee of Thomas S. Dobbins, in bankruptcy, to Frank I. Bennett, and from Frank I. Bennett, all covering the interest of said Dobbins in S. ½ frac., sec. 13, E. 38 N., R. 14 E., 3rd P. M., and it is held, first, to secure the payment of the within-named sum of twenty-one thousand dollars; second, to secure to the holder thereof the payment of $7,200, evidenced by note of Llewellyn Curry, payable to the order of himself and by him endorsed, dated February 26, 1880, payable on demand.

Witness my hand this 26th day of February, 1880.

(Signed) FRED. A. INGALLS.

* * * * * * *

(Endorsed:) Filed October 28, 1880. Wm. H. Bradley, cl'k.

45 *Answer of F. A. Ingalls.*

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of Cook County. September Term, 1880.

SOUTH PARK COMMISSIONERS } Bill. Gen. No. 36170.
vs.
JAMES MORGAN *et al.* }

Answer of Fred. A. Ingalls, one of the defendants named in the bill of complaint of the South Park Commissioners, complainant.

This defendant, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering saith:

This defendant says that he has no knowledge, information, or belief as to the statements, interrogatories, or charges in the said bill of complaint contained, except only as to the charges specifically made in reference to this defendant; and as to these said defendant admits that this defendant is the grantee named in the deeds specified as made to this defendant in said bill of complaint; that this defendant executed and delivered the declarations of trust in said bill set forth.

46

This defendant, further answering, says that this defendant holds the title conveyed to him by said deeds to the premises therein described in trust, first, to secure the sums of money in said declarations of trust specified as therein stated; second, to convey subject to the order of parties other than complainant and not to complainant, save in the event of the consum-ation of a certain agreement between said complainant and William P. Kerr, when defendant is to convey in accordance with such agreement (said agreement being

the same as the copy attached to James Morgan's answer herein as "Exhibit A"); but in the event of the non-consum-ation of such agreement, then said defendant holds such title as adverse to complainant.

This defendant, further answering, says true it is that this
47 defendant received by messenger the note of which a copy is set forth in said bill of complaint; but this defendant denies that no response was made thereto, but, on the contrary, avers that on the receipt of said note this defendant instructed the bearer thereof to inform Mr. Bonfield, the writer of said letter, that the deeds referred to were filed of record, and that he, Bonfield, could go to the records of this county and copy such deeds as he wanted.

And now this defendant, having fully answered, without this, that any other matter, charge, or thing in said bill contained not herein specifically confessed, traversed, avoided, or denied is true to the knowledge, information, or belief of this defendant, and this defendant denies the same: Wherefore said defendant prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

FRED. A. INGALLS,
By J. LEAMING, *His Sol'r.*

J. LEAMING,
Sol'r for s'd Def't.

* * * * * * *

Endorsed: Filed October 28, 1880. Wm. H. Bradley, cl'k.

48 *Petition.*

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County. In Chancery.

THE SOUTH PARK COMMISSIONERS, Compl't,
vs.
JAMES MORGAN, WM. P. KERR, JOHN C. DUNLEVY, JOHN I. BENNETT, W. K. NIXON, L. CURRY, *et al.*

To the honorable judges of said court:

The petition of Wm. P. Kerr, one of the defendants in the above-entitled cause, respectfully shows that your petitioner is a defendant in this suit, and that the same was brought by said South Park
49 Commissioners to the October term, A. D. 1880, of the circuit court of Cook county, in said State of Illinois; that your petitioner was at said time, has since been, and is now, a citizen of the State of Ohio, and that the said complainant was at the time of bringing said suit, has since been, is now, a citizen and resident of the State of Illinois; that in this suit there is a controversy between your petitioner and the said South Park Commissioners, relating to the ownership of certain notes and securities and the title to the land described in said South Park Commissioners' bill of complaint.

That the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs, and that the controversy is between citizens of different States, and can be fully determined between them; that this cause has not been tried, and that tha same is now pending in the said circuit court of Cook county, on the chancery side thereof, and that first term of said court at which this cause could be tried has not yet arrived.

That your petitioner desires to remove this suit, before the trial thereof, into the next circuit court of the United States to be held in the northern district of Illinois, in the seventh circuit, in pursuance of the provisions of law as contained in an act of Congress approved March 3rd, A. D. 1875, entitled, "An act to determine the jurisdiction of the circuit courts of the United States and to regulate the removal of causes to said courts, and for other purposes."

And your petitioner further shows that he is ready and willing to give a good and sufficient bond and security for the doing of all acts and things required to be done by said provisions of law upon the removal of a cause into the circuit courts of the United States, and he offers to file herein a bond, executed by —— ——, of the city of Chicago, in the penal sum of five hundred dollars, conditioned as by said act of Congress required.

And your petitioner therefore prays that the said bond may be accepted as good and sufficient security, according to said provisions of law, and that the said suit may be removed to the circuit court of the United States holden for the northern district of Illinois, in the seventh circuit, pursuant to the Statutes of the United States in such case made and provided, and that no further proceedings may be had therein in this court.

And your petitioner will ever pray, &c.

WM. P. KERR,
By JNO. C. DUNLEVY, *His Sol.*

STATE OF ILLINOIS, } ss:
County of Cook. }

John C. Dunlevy, being first duly sworn, on oath says that he is the attorney, agent, and attorney-in-fact of said Kerr; that he has read the foregoing petition and knows the contents thereof; that the matters and things therein alleged are true; and further says not.

JOHN C. DUNLEVY.

Subscribed and sworn to before me this 20th day of October, A. D. 1880.

JACOB GROSS, *Clerk.*

* * * * * * *

(Endorsed:) Filed October 28, 1880. Wm. H. Bradley, cl'k.

52 *Order.*

36170.

SOUTH PARK COMMISSIONERS
v.
JAMES MORGAN, WM. P. KERR, *et al.* } 1488. Bill.

Ordered that the bond this day filed in this court by John C. Dunlevy, as solicitor for Wm. P. Kerr, under and in pursuance of the offer of the petition of said Kerr filed October 20, 1880, praying that said cause be transferred to the U. S. circuit court for the northern district of Illinois, and which said bond is signed and sealed by Louis Newton and Jno. B. Drake, be, and the same is hereby, approved.

* * * * * * *

(Endorsed:) Filed October 28, 1880. Wm. H. Bradley, cl'k.

53 Afterwards, to wit, on the 13th day of December, A. D. 1880, came Wm. P. Kerr, one of the defendants, by his solicitor, and filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of William P. Kerr.

Circuit Court of the United States for the Northern District of Illinois.

THE SOUTH PARK COMMISSIONERS
vs.
JAMES MORGAN, WILLIAM P. KERR, *et al.* } Bill in Chancery.

The separate answer of William P. Kerr, on- of the defendants named in said bill of complaint.

This defendant, saving to himself all right of exception to the manifold inaccuracies and uncertainties in said bill of complaint, for answer thereto or to so much thereof as this defendant is advised is material for him to make answer unto, answering, says:

That he admits the incorporation and the selection of the lands for the purposes of the South Park substantially as set forth
54 in said bill; that he admits the adoption of said resolution of November 21st, 1879, set forth in said complainant's bill, and the appropriation of ninety thousand dollars thereunder; that a warrant for eighty-two thousand eight hundred dollars thereof was issued and made payable to the National Bank of Illinois; that about seven thousand two hundred of said ninety thousand was paid to J. C. Dunlevy, attorney-in-fact of this defendant. This defendant is informed that said Morgan handed to the secretary of said complainant the Nixon, Curry, and Bennett notes as alleged, together with the Dobbins notes purporting to be collateral thereto, but avers that said National Bank of Illinois had no right to sell said collateral notes, nor had Morgan, as president of said board, any

legal right or power to purchase and transfer any of said notes to said board, but should have collected the said Nixon, Curry and Bennett notes and delivered them to the makers thereof; and this defendant denies that any part of the ninety thousand dollars appropriated under said resolution "was investe- by said Mor-
55 gan, not only in purchasing said trust deed and notes secured thereby, bearing date November 26, 1872, but also whatever interest the said Thomas S. Dobbins or any of his assignees had in and to said south half of fractional section 13, 38, 14, except, and so forth, prior to the execution of the trust deed to Daniel P. Rhodes, Daniel Jones, dated November 26th, 1872, as aforesaid, or which said Dobbins or his said assignees acquired subsequently thereto." And this defendant further denies "that the deeds, conveyances, and securities so purchased or acquired are the property of or held in trust for the South Park Commissioners, compl., by the person or persons named as grantee or grantees or payees in said deeds, conveyances, and securities and each of them."

This defendant says that he is not advised whether said Curry, Nixon, and Bennett admit or deny their liability under said notes, but he is informed and believes that John R. Walsh, the president, and other members of said board have assured and promised them that said park board would not hold them or either of them re-
56 sponsible for any part of said notes, and have advised them to pay no attention to this suit.

This defendant, further answering, says that he claims to have and has a good and indefeasible title to said south half of fractional section 13, T. 38, R. 14 E., as described in said bill, containing two hundred and twenty-four acres, and that neither the South Park Commissioners, comp't, nor any of his codefendants named in said bill, have any title to or interest in said land or premises in said bill described, except that said South Park Commissioners on August 27th, 1870, obtained possession thereof, and have ever since used the same for park purposes, and are entitled to a credit as part payment as purchaser of said land from this defendant, of eighty-two thousand eight hundred dollars, with interest from November 14th, 1879, and of about seven thousand two hundred dollars, with interest from February 26th, 1880, to be entered and given by this defendant upon and against the price and value of said half section of land when the same shall be taken and condemned by the
57 South Park Board and the value thereof and the damages accruing to him therefor shall be ascertained and fixed by a jury in the circuit court of the United States for the northern district of Illinois, under and according to the terms of an agreement between the parties and a decree entered by the Hon. John M. Harlan, on October 8th, 1878, in said court, as will more fully appear by the orders and decree in said cause, and the contracts and agreements between the parties hereinafter set forth.

This defendant, further answering, says that about May 25, 1879, after some four months' negotiations between this defendant, by his attorney-in-fact, John C. Dunlevy, and three members (being a majority) of said Board of South Park Commissioners, to wit, John R.

Walsh, John B. Sherman, and James Morgan, in and abont a compromise and adjustment of the litigation in and about the title to and value of the south half of said fractional section 13 described in said bill, they had fully agreed upon the terms of said com-
58 promise and settlement and reduced the same to writing; that in the beginning of such negotiations it was agreed that the same should be conducted with said members (being a majority of said board) alone, and that everything touching the same should for good and sufficient reasons (which will be developed upon the trial of this cause) be kept secret from Corneil-us Price, one of said Park Commissioners, until a conclusion should be reached and the whole matter brought before the entire board for adoption. Mutual pledges of honor were given that if a satisfactory conclusion could be reached the *the* same should be honestly and cordially carried out by the said three members of the said South Park Board (being a majority) in and at a regular board meeting to be held thereafter; and it was further agreed and understood that said South Park Commissioners should aid this defendant by advice and counsel and an advance of money and full co-operation to carry out his part of the agreement to adjust and settle liquidation about said lands,
59 and perfect the title to the same in himself or in said park commissioners under said agreement, which is substantially set out in the contract between the parties, being Exhibit "A" to the answer of said James Morgan in this cause, and which is for brevity hereby referred to and made a part hereof.

It was further agreed during said negotiations that if for any reason the Board of South Park Commissioners should fail, refuse, or be unable to approve, ratify, accept, and agree as a corporate body to carry out said contract when the same should be brought before a full board in regular meeting, that then any money advanced by them or by their agency, in view of such settlement, compromise, and adjustment, and in furtherance of said contemplated contract should stand, and with interest be credited as an advance payment on defendants' whole interest in said land when the value of the same should be fixed and ascertained as aforesaid.

That said agreement was reduced to writing and signed by defendant, by his attorney-in-fact, and by R. S. Thompson, agent of said commission, and delivered to R. S. Thompson, the agent
60 of said South Park Commissioners, and that in accordance therewith this defendant executed the deeds, as per agreement and contract required, and tendered the same to said South Park Commissioners, and the same were laid before and tendered to said board in accordance with said agreement, at its regular meeting, on the 21st day of November, A. D. 1879; that at said regular meeting said board failed to approve the same, and has ever since refused to ratify, approve, or accept the same, and said board claims and insists that it is not bound by any such contract, agreement, or understanding between it and this defendant.

Defendant, further answering, says that he respectfully declines to bring into court here any papers, instruments, or documents in his possession or "to disclose his doings in the premises"—first, be-

cause the character and form of said bill of complaint is not such as to require him to treat it as a bill of discovery, and, second, because said complainant and its attorney have in their own knowl-
61 edge, possession, and control all the facts, papers, and documents touching the matters set forth in said bill, as this defendant is informed and believes, but this defendant would informe said commissioners, complainant, that the title to fractional section 13, 38, 14 has been for many years in litigation between complainant and this defendant, which litigation is now pending in the Supreme Court of the United States, and that there has also been much litigation in the State courts of Illinois between this defendant and Thomas S. and Mary C. Dobbins as to the title to one-fourth interest in said land, and that in the files and records of said suits may be found all the "papers and testimony pertinent to complainants' interest therein;" that this defendant thought that he had, by the contract of November 14, 1879, attached to said Morgan's answer, adjusted, settled, and compromised with said complainant all of said litigation about and title to said lands, as well as the litigation with said Dobbins and wife in reference to the one-fourth interest in the said land, which was settled and ended by their con-
62 veying their whole interest in the same to said defendant Ingalls, subject to a judgment in this court against Mrs. Dobbins for about $70,000, rendered on the — day of ——, 1878, the purchase-money due from and owing by her to this defendant on account of said one-fourth interest, but this defendant says that notwithstanding that the said three individual members (being a majority of said board) solemnly pledged themselves that they would in regular meeting of said board adopt and carry out said contract, that he is informed and believes that said South Park Commissioners, at their regular board meeting, on about the 18th day of Dec., 1879, and at several subsequent meetings, repudiated and refused to carry out said contract of November 14th, 1879, and did then and have ever since denied that it ever had any binding force or effect on them as a corporation; and that the members of said board of South Park Commissioners, by themselves and their attorneys, have since November 14th, 1879, colluded and co-
63 operated with the adversaries of this defendant in inaugurating and carrying on further litigation touching the title to said land, and have pursued a course toward this defendant intended and designed to pervert and hinder him from carrying out on his part the said agreement of November 14, 1879, and this notwithstanding the said three members of said board (being a majority thereof) solemnly pledged themselves to this defendant that they would in regular board meeting adopt and carry out said contract, and this to the great pecuniary loss and damage of and to this defendant in the sum of one hundred thousand dollars. This defendant admits the said sum of $21,000, which the said Illinois Bank paid in discounting John I. Bennett's note, was used in the compromise and settlement of the said dispute in litigation between this defendant and Mrs. Dobbins, and that the said deeds of said Dobbins and wife to said Ingalls were made in order to settle the

Dobbins litigation and enable defendant to carry out said compromise and agreement, and this defendant avers that said South Park Commissioners have wholly failed, and by their
64 action as a corporate board refused and failed to carry out the said contract of November 14, 1879, and that therefore this defendant is absolved and released both in law and equity therefrom; and that his whole and only equitable liability resulting from said agreement and contract and payment by said commission of said $90,000 is that he should grant consent and allow that the said ninety thousand dollars appropriated by said board and paid out through James Morgan, the president thereof, under said resolution of November 24*st*, 1879, less fifty thousand dollars damages sustained by def't, should be taken and held to be a general payment (with six per cent. per annum interest from the date of payment) on this defendant's interest in and title to said south half of fractional section 13, T. 38, R. 14, as provided by said agreement between the parties and under the terms of the decree of said United States circuit court.

And defendant, further answering, says and avers that said Nixon, Curry, and Bennett notes were executed and delivered to said
65 Illinois National Bank, and by said bank bought and discounted with the express understanding and agreement made at the time by and between said three members of said park board and said bank that said park board (or said three members thereof) would at maturity pay and take up said notes in accordance with and on account of the said contracts, agreement, and understanding between said three members of said board and this defendant, and defendant avers that said notes were so taken and paid by said board in accordance with said agreement.

Defendant, further answering, says and avers that said deeds were made by Dobbins and wife and Jenkins' receiver and assignees that the title might be held by him in trust subject to the judgment and claims against Mrs. Dobbins as aforesaid, to be conveyed to the South Park Commissioners and delivered to J. Leaming to be held in escrow if they should ratify and carry out said agreement
66 of Nov. 14th as aforesaid, and if not that then said Ingalls should hold said title for the payment of said claim against Mrs. Dobbins and convey the same to said Kerr upon his giving credit to the South Park board for the amount of money advanced, after deducting his damages for non-fulfillment of said contract by said board, with interest as aforesaid, by said board in view of said contracts.

And this defendant therefore asks and prays that such credit of forty thousand dollars, after allowing def't credit of $50,000.00 damages, be entered as a part of the purchase-money on said land; that said Ingalls be decreed to convey said interest to this defendant, and that said agreement of Nov. 14, 1879, be decreed to be null and void, and that all of the balance of the value of said half section of land with interest be ordered to be paid over to this defendant when the same shall be ascertained by a jury, according to the terms of the decree hereinbefore entered by this court in said cause; and this

defendant prays to be hence dismissed, with his reason-
67 able costs in this behalf expended.

WM. P. KERR,
By JNO. C. DUNLEVY,
His Sol.

Endorsed: Filed Dec. 13, 1880. W. H. Bradley, cl'k.

68 Afterwards, to wit, on the fourteenth day of March, in the adjourned March term of said court, A. D. 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

SOUTH PARK COMMISSIONERS } In Chancery.
vs.
JAMES MORGAN *et al.* }

On motion, leave is given the defendant, William P. Kerr, to amend his answer filed herein December thirteenth, A. D. 1880, by erasure and interlineation.

69 Afterwards, to wit, on the eighteenth day of April, in the adjourned March term of said court, A. D. 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

SOUTH PARK COMMISSIONERS } In Chancery.
vs.
JAMES MORGAN *et al.* }

On motion, leave is given Charles B. Phillips to file a cross-bill herein.

Afterwards, to wit, on the second day of July, in the adjourned May term of said court, A. D. 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

SOUTH PARK COMMISSIONERS } In Chancery.
vs.
JAMES MORGAN *et al.* }

On motion, it is ordered by the court that this cause be referred to Henry W. Bishop, Esq., a master in chancery of this court,
70 to take proofs herein and report the same to the court, such proofs to be closed by the first day of October next.

Afterwards, to wit, on the sixth day of July, A. D. 1881, came the South Park Commissioners, by their solicitors, and filed in said clerk's office their replication to the answer of James Morgan *et al.* in said entitled cause, which said replication is in the words and figures following, to wit:

71 *Replication.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court of the United States. Term A. D. 188–.

SOUTH PARK COMMISSIONERS } In Chancery. 17198.
vs.
JAMES MORGAN *et al.* }

The replication of South Park Commissioners, complainant, to the several and joint & several answers of James Morgan, Fred A. Ingalls, Frank I. Bennett, John I. Bennett, John C. Dunlevy, and William P. Kerr.

This repliant, saving and reserving to itself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers, and each of them, of the said defendants, for replication thereunto, says it will aver, maintain, and prove its bill of complaint to be true, certain, and sufficient in
72 the law to be answered unto, and that the said answers, and each of them, of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays as in and by its said bill it has already prayed.

DUPEE & JUDAH,
Solicitors for Complainant.

Endorsed: Filed this 6th day of July, A. D. 1881. W. H. Bradley, clerk.

73 Afterwards, to wit, on the seventeenth day of January, A. D. 1882, in the December term of said court, A. D. 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

SOUTH PARK COMMISSIONERS } In Chancery.
vs. } Original Bill.
JAMES MORGAN *et al.* }

And

JOHN P. BENNETT } Cross-Bill.
vs. }
SOUTH PARK COMMISSIONERS *et al.* }

And now, on motion of solicitors for complainant and for defend-

ants, respectively, it is ordered that the rule heretofore entered in above-entitled causes limiting the time for taking proofs be extended to February first, A. D. 1882.

74 Afterwards, to wit, on the seventh day of February, A. D. 1882, in the December term of said court, A. D. 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

SOUTH PARK COMMISSIONERS *vs.* JAMES MORGAN *et al.* } In Chancery. Original Bill.

And

JOHN P. BENNETT *vs.* SOUTH PARK COMMISSIONERS *et al.* } Cross-Bill.

On motion of complainant's solicitor it is ordered that the rule heretofore entered directing the parties to original and cross-bills filed herein to close the taking of evidence in said cause be, and the same is hereby, extended to and including the fourteenth day of February, A. D. 1882.

75 Afterwards, to wit, on the twentieth day of February, A. D. 1882, in the December term of said court, A. D. 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

SOUTH PARK COMMISSIONERS *vs.* JAMES MORGAN *et al.* } In Chancery.

This cause coming on to be heard upon the motion heretofore made by James Morgan, one of the defendants, that the cause be heard and the bill dismissed as to him upon the motion of the plaintiffs in the original bill, — that the cause be remanded to the State court for want of jurisdiction; and upon the motion of the defendant Ingalls for leave to amend his original answer filed in this cause, and the court now being fully advised upon the said motions, overrules the motion to remand this cause to the State court, this court being of opinion that Ingalls, one of the defendants herein, is a mere trustee of the real property held by him, and

76 that there is no controversy between him and the plaintiffs in the original bill.

And it is further ordered that the said defendant Ingalls have leave to amend his answer, which amendment is now filed.

And it is further ordered that the motion of the said defendant Morgan be sustained and the bill dismissed as to him.

And it is further ordered that the said plaintiffs in the original

bill shall have the right to name the trustees to whom the real estate held by the said Ingalls shall be conveyed, this court being of the opinion that the estate held by the said Ingalls is primarily liable for the claim of the said plaintiffs in the original bill, and secondarily to the equities, if any, of William P. Kerr, one of the defendants in the original bill, the said real estate to be conveyed by the said Ingalls to the trustee named by the said South Park Commissioners, subject to the decree of this court as to their rights and equities and the rights and equities of the said Kerr.

The said South Park Commissioners except to the opinion of the court overruling the motion to remand this cause, and pray an appeal to the Supreme Court of the United States from this
77 order of the court dismissing the bill as to James Morgan, which appeal is allowed upon their giving bond according to law.

On the same day, to wit, on the twentieth day of February, A. D. 1882, came F. A. Ingalls, one of the defendants, by his solicitors, and filed in said clerk's office his amended answer in said entitled cause, which said amended answer is in the words and figures following, to wit:

78 *Amendment to Ingalls' Answer.*

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the Circuit Court of the United States. In Chancery.

SOUTH PARK COMMISSIONERS
v.
JAMES MORGAN, FRED. A. INGALLS, *et al.* } 17198.

And now comes said Fred. A. Ingalls, one of the defendants in the above-entitled cause, and by leave of the court first had and obtained amends his answer originally filed in said cause by inserting in said original answer, just before the formal ending of said answer, the following:

This defendant, further answering, says that he has no further or other interest in the property described in the bill of complaint than as the naked trustee of the title; that he executed the several declarations of trust set forth in said bill and this defendant's original answer in accordance with this defendant's information at the time of receiving the conveyance of the said title; that after
79 securing the claims mentioned in said declaration this defendant was to convey said title in accordance with a certain proposed agreement between said South Park Commissioners and said William P. Kerr, a copy of which is attached to said Morgan's answer in this cause, marked "A," in the event that such agreement should be approved by said South Park Commissioners; but, in the event of the non-approval by said South Park Commissioners, then this defendant was to convey subject to the trusts above mentioned to said Kerr; that this defendant disclaims all personal or private interest

in said premises, and now offers to convey said premises to such person or persons, or corporation, as this honorable court shall direct.

FRED. A. INGALLS.
J. LEAMING,
Solicitor.

J. LEAMING,
Of Counsel.

Endorsed: Filed Feb. 20th, 1882. Wm. H. Bradley, clerk.

80 Afterwards, to wit, on the twenty-fifth day of February, A. D. 1882, in the December term of said court, A. D. 1881, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

SOUTH PARK COMMISSIONERS
vs.
WILLIAM P. KERR, F. A. INGALLS, *et al.* } In Chancery.

On motion of counsel for the South Park Commissioners, the above cause is set for hearing on Monday, the sixth day of March, A. D. 1882.

81 Afterwards, to wit, on the twenty-sixth day of May, in the adjourned May term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

THE SOUTH PARK COMMISSIONERS
vs.
F. A. INGALLS *et al.* } In Chancery.

It appearing to the court that the defendants, F. A. Ingalls, by his amendment to his answer herein filed on the twentieth day of February, A. D. 1882, disclaims all personal or private interest in the premises in controversy herein, and offers to convey said premises to such person or persons or corporation as the court shall direct, it is hereby ordered, and the said defendant Ingalls is hereby directed, in accordance with his said offer, to convey to James R. Doolittle all the right, title, and interest in him, said Ingalls, vested in and to the undivided one-fourth part of the south half of fractional section thirteen (13), township thirty-eight (38), N. R. fourteen (14) east, in the county of Cook and State of Illinois.

82 Afterwards, to wit, on the twelfth day of June, in the adjourned May term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

Order.

THE SOUTH PARK COMMISSIONERS } In Chancery.
vs.
FREDERICK A. INGALLS *et al.* }

And now, at this day, the parties appeared, by their respective counsel, and the death of William P. Kerr being suggested, and that he had made a will which has been probated, and a petition to revive the suit as to his legal representatives being filed, it is ordered that said case be, and the same is hereby, revived as to Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors and trustees under the will of said William P. Kerr, deceased; and it is ordered that they be duly notified to appear and answer to the bill, and the amendments thereto, on or before the tenth day of July next.

83 And it is ordered that the plaintiff have leave to file amendments to the bill; which amendments are now filed.

On the same day, to wit, on the twelfth day of June, A. D. 1882, there was filed in said clerk's office a bill of revivor in said entitled cause, which said bill of revivor is in the words and figures following, to wit:

84 *Bill of Revivor.*

In United States Circuit Court in and for the Northern District of Illinois. In Chancery.

To the hon. the judges of said court, in chancery sitting:

Your orator, the South Park Commissioners, a corporation duly created under the laws of the State of Illinois, and located and doing business in the northern district of Illinois, respectfully represents unto your honors that on the — day of September, A. D. 1880, your orator exhibited its original bill of complaint in the circuit court of Cook county, in the State and northern district of Illinois against William P. Kerr and others, thereby setting forth the payment by your orator of certain money in and about the acquisition of the real estate next stated, and the receipt of certain alleged securities relating thereto, and praying certain relief in respect to said real estate, to wit, the undivided one-fourth part of the south half of fractional section thirteen, township thirty-eight north, range fourteen east, in the county of Cook and State of Illinois; and the said William P. Kerr being, with others, duly served with process, ap-

85 proved and put in his answer to said bill, to which your orator filed its replication; whereupon such proceedings were had that said cause was removed into this court upon the petition of said Kerr, and thereafterwards witnesses were examined in said cause on both sides, and said cause was brought in for final hearing and fully heard, as by the said pleadings and other proceedings in the said cause now remaining as of record in this honorable court, reference being thereunto had, will more fully appear, and which pleadings your orator hereby makes part hereof.

And your orator further shows unto your honors that on the 20th day of February, A. D. 1882, one Frederick A. Ingalls, one of the

defendants therein, to whom the said undivided one-fourth of the south half of fractional section thirteen, aforesaid, had been theretofore conveyed, upon his own application obtained leave of this honorable court to amend his answer therein, and did amend the same, so as by said amendment to state "that he has no further or other interest in the property described in the bill of complaint than as the naked trustee of the title; that he executed the several declarations of trust set forth in said bill and this defendant's original answer in accordance with this defendant's information at the time of receiving the conveyance of said title; that after receiving the claims mentioned in said declaration this defendant was to convey said title in accordance with a certain proposed agreement between said South Park Commissioners and said William P. Kerr, a copy of which is attached to said Morgan's answer in this case, marked 'A,' in the event that such agreement should be approved by said South Park Commissioners, but in the event of the non-approval by said South Park Commissioners, then this defendant was to convey, subject to the trusts above mentioned, to said Kerr; that this defendant disclaims all personal or private interest in said premises, and now offers to convey said premises to such person or persons or corporation as this honorable court shall direct."

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And thereupon, by the order of this honorable court in said cause on said 20th day of February, A. D. 1882, entered therein, the said defendant, F. A. Ingalls, was directed to convey said undivided one-fourth part of the south half of fractional section thirteen, aforesaid, to whomsoever your orator might designate, and in accordance with the offer in said Ingalls' said amended answer contained and the direction of the court said Ingalls conveyed said real estate to James R. Doolittle, of Wisconsin, on the 29th day of May, A. D. 1882.

87

And your orator further represents that after the hearing of said cause, but before decree entered therein, and on or about the 15th day of April, A. D. 1882, the said William P. Kerr departed this life, and the said suit and the proceedings therein having become abated as to him, said W. P. Kerr, by the death of the said defendant, William P. Kerr, your orator, as it is advised, is entitled to have the same revived as against the heirs of the said William P. Kerr, or such persons as come in *in* the same right as said Kerr, deceased, and restored to the same condition in which they were at the time of his death.

And your orator, by way of supplement, further represents that the said William P. Kerr in his lifetime duly made and published his last will and testament in writing, being dated the 1st day of April, A. D. 1882, which was duly admitted to probate by the probate court of Licking county, Ohio, on the 31st day of May, A. D. 1882, and thereby devised and bequeathed all his property, real, personal, and mixed, unto his wife, Susie M. Kerr, and his daughter, Rosa L. Kerr, and his son, Joseph B. Kerr, as executors, to be by them equally divided into seven shares, and one equal seventh part thereof to be given to his, said Kerr's, wife and six

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children, share and share alike, and also thereby authorized, empowered, and directed his said executors to sell, and deeds to make and deliver to the purchasers, either at public or private sale, of any of his real estate, at such times and on such terms as they might think best, or to lease the same, a copy of which said will is hereunto annexed, marked "A" and prayed to be taken as a part hereof.

And your orator further represents that the said William P. Kerr departed this life at the time above specified without having altered or revoked his said will, and that your orator is entitled to the benefit of its said suit against the said Susie M. Kerr, Rosa L. Merr, and Joseph B. Kerr, as trustees and executors under the will of said Kerr, and to the like relief as it would have been entitled to against the said William P. Kerr if he were still living.

Forasmuch, therefore, as your orator is without remedy in the premises, except in a court of equity, and to the end that the said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, who are made parties defendant to this bill, may be required to make full and direct answer to the same, but not under oath, their answers under oath, severally and jointly, being hereby waived pursuant to the statute and the rules and practice of this
89 court, and that the said suit and proceedings so stated as aforesaid may stand revived against the said Susie M. Kerr, Rora L. Kerr, and Joseph B. Kerr, executors and trustees under said will as aforesaid, and be in the same plight and condition in which they were at the time of the death of said William P. Kerr, and that your orator may have the benefit of the said suit and the proceedings therein against the said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, and such relief as, if the said William P. Kerr were still living, it would be entitled to against him, and that your orator may have such other and further relief in the premises as equity may require, &c.:

May it please your honors to grant the writ of summons in chancery to bring said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors and devisees under the will aforesaid, before this court to answer the premises, &c., &c.

And as in duty bound will ever pray, &c.

SOUTH PARK COMMISSIONERS,
By M. W. FULLER, *Their Solicitor.*

M. W. FULLER,
Of Counsel.

90 EXHIBIT "A."

In the name of the Benevolent Father of All, I, William P. Kerr, of Granville, Licking county, Ohio, do make, publish, and declare this to be as and for my last will and testament:

Item 1st. I direct that all my just debts be fully paid.

Item 2nd. I devise and bequeat all my property, real, personal, and mixed, to my beloved wife, Susie M. Kerr, and my daughter, Rosa L. Kerr, and my son, Joseph B. Kerr, as executors, to be by them equally divided into seven shares, and one equal seventh part

thereof to be given to my said wife and my six children, to wit, Rosa L., Abby J., Joseph B., Hattie B., Wm. P., and George Kerr, share and share alike, to my said wife and said six children.

Item 3rd. I hereby authorize, empower, and direct my said executors to sell and deeds to make and deliver to the purchasers, either at public or private sale, any or all my real estate, at such times and on such terms as they may think best, or to lease the same or any part thereof, the proceeds to be divided as aforesaid (the money here-
tofore advanced my son Joseph B. and invested in Utah not to
91 be considered a part of my estate, but as a naked gift to him).

Item 4th. I desire and direct that my said ex't'rs be not required to give bond as such, and that no appraisers be appointed, nor shall any inventory or appraisement of my property be made, intending that my said executors shall divide and dispose of all my estate as aforesaid without the intervention of a court of probate except to probate the will and issue letters testamentary, and I authorize and direct my said executors to carry out all my contracts as fully as I could myself do.

Item 5th. I hereby constitute and appoint my beloved wife, Susie M. Kerr, testamentary guardian of both the persons and property of my three last-named minor children, and direct that she be required to give no bond or surety as said guardian, either of or for their persons or estates, the devise above to my said wife being in lieu of her dower in all of my real estate and her year's allowance and articles that would be set off to her under the statute.

Item 6th. I hereby revoke all former wills by me made, declaring this to be my last will and testament.

WILLIAM P. KERR. [SEAL.]

Signed, sealed, acknowledged, and declared by Wm. P. Kerr to be his last will and testament in our presence and signed by us
92 as witnesses thereto in his presence and at his request, this April 1st, 1882.

JOHN EVANS.
JNO. C. DUNLEVY.
E. SINNET.
J. L. HOWLAND.

(Endorsed:) Filed June 12, 1882. W. H. Bradley, clerk.

On the same day, to wit, on the 12th day of June, A. D. 1882, there was filed in said clerk's office an amended and supplemental bill in said entitled cause, which said amended and supplemental bill is in the words and figures following, to wit:

93 *Amendments to Bill.*

In United States Circuit Court, Nor. Dist. of Ills.

THE SOUTH PARK COMMISSIONERS

vs.

FREDERICK A. INGALS *et al.*

Your orator files by leave of court this supplemental bill and amendments to its original bill herein, and by way of supplement, says:

That the original defendant, William P. Kerr, departed this life on or about the 15th day of April, A. D. 1882, testate, and by his will devised and bequeathed all his property, real, personal, and mixed, unto his wife, Susie M. Kerr, and his daughter, Rosa L. Kerr and his son, Joseph B. Kerr, as executors, to be by them divided into seven shares, and one equal seventh part thereof to be given to his, said Kerr's, wife and six children, share and share alike, with full power to dispose of his, said Kerr's, real estate; that by bill of revivor duly herein filed on the 12th day of June, A. D.

94 1882, this cause was duly revived as to said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, and they made parties defendant hereto, and said cause is revived as to them, and your orator hereby makes them such parties, and avers as in and by its said bill and the amendments thereto it has already averred and doth aver.

Your orator further shows that on the 29th day of May, A. D. 1882, by direction of this court, and upon his own offer to do so, in his answer as amended contained, said Frederick A. Ingalls has conveyed the real estate in said bill mentioned to one James R. Doolittle, who resides in and is a citizen of the State of Wisconsin, and your orator makes said James A. Doolittle party defendant hereto, and charges that he holds said property in trust for your orator.

And your orator further, by leave of court, amends its original bill, as follows:

By inserting after the 21st line from the top of page 6 of the transcript from the circuit court of Cook county filed herein the following:

95 "And your orator further shows unto your honors that in the year 1872 Mary C. Dobbins purchased of one William P. Kerr all the right, title, and interest of said Kerr in and to the undivided one-fourth (¼) of the south half (½) of fractional section thirteen (13), township thirty-eight (38) north, range fourteen (14) east, in the county of Cook and State of Illinois, for the sum of $80,000, $30,000 in cash and the balance in two notes of Thomas S. Dobbins for $25,000 each, payable in one year and two years from the first of June, A. D. 1872, with interest thereon at 8% per annum; that said Kerr conveyed said undivided one-fourth for said Mary C. Dobbins to one Daniel P. Rhodes, who executed a trust deed to Daniel Jones, as trustee; John B. Drake, successor in trust, to secure the two notes of Thomas S. Dobbins above mentioned; and there-

upon and on or about November 26th, A. D. 1872, said Rhodes conveyed said real estate to said Mary C. Dobbins, the conveyance to her containing an assumption on her part of the payment of said notes of Thomas S. Dobbins.

"That in May, 1879, the National Bank of Illinois advanced
96 sixty thousand dollars, which was paid to the said William P. Kerr upon the assurance that such advance was for the benefit of the South Park Commissioners and would be paid by that corporation, and said bank received the notes of Thomas S. Dobbins before referred to, and also two notes, one of W. K. Nixon, for $30,325, and one of Llewellyn Curry, for $30,225; but the advance was not made on the credit of these notes.

"That in November, 1879, the bank made an advance of $21,000 on the assurance that such advance was for the benefit of the South Park Commissioners, and would be paid by that corporation, and said bank received the note of John I. Bennett for $21,000, but did not make the advance on the credit thereof.

"That the $21,000 was paid to Mrs. Mary C. Dobbins, and she and her husband, Thomas S. Dobbins, executed and delivered to one Frederick A. Ingalls a deed of said undivided one-fourth."

And your orator further amends its said original bill by leave, &c., by striking out on page 7 of said transcript from the
97 Cook county circuit court after the resolution therein set forth, the paragraph commencing "that in pursuance thereof" and ending "to said Morgan thereon," and inserting as follows:

"That said resolution was adopted for the purpose of acquiring all the right, title, and interest of Mary C. Dobbins and her husband, Thomas S. Dobbins, in and to the said undivided one-fourth of said south half of frac'l sec. 13, and in pursuance thereof a warrant for $82,800 was duly issued by your orator on the 24th day of November, A. D. 1879, and was delivered, and the money paid to the National Bank of Illinois, which thereupon delivered to James Morgan, then president of the Board of South Park Commissioners, the said notes of Thomas S. Dobbins for $25,000 each, the note of Curry for $30,225, and the note of Nixon for $30,325, the note of J. I. Bennett for $21,000, and a paper, signed by F. A. Ingals, declaring that he held title of Mrs. Dobbins and husband to secure the said note of said Bennett.

"That on the 25th day of February, A. D. 1880, conveyances were made by R. E. Jenkins, assignee in bankruptcy of Dobbins, to F. I. Bennett, and from Bennett to F. A. Ingals, and from
98 Jenkins, receiver of Dobbins to Ingals, which were executed and delivered to Ingals on or about the 26th day of February, A. D. 1880, on which day your orators's warrant for $7,200 (making $90,000 in all) was delivered to W. P. Kerr, and the money named therein paid to him, and said Curry executed a note for $7,200, which was handed to said Morgan, then president of your orator, and said Ingals made a further declaration that he held such title as was derived under the deeds of Jenkins to secure the notes of Bennett and Curry, which was also delivered to said Morgan."

And your orator further amends its said bill by like leave, &c.,

by striking out the paragraph on page 18 of said transcript commencing, "and your orator having caused such information," &c., and ending on the 27th line of page 19 of said transcript with "not known to your orator," and inserting as follows:

"And your orator charges that the said sum of ninety thousand dollars was so paid out by your orator as aforesaid in the acquisition of, and your orator thereby did acquire all the right, title, and interest of, Mary C. Dobbins and Thomas S. Dobbins, herh us-
99 band, in and to the said undivided one-fourth of the south one-half of said fractional section thirteen, as well as the encumbrance thereon, and the two notes of Thomas S. Dobbins secured thereby, and that said encumbrance should be decreed satisfied; and said James R. Doolittle, who holds under direction of court by conveyance from said Ingals (as hereinbefore stated by way of supplement), should be decreed to convey to your orator; whereupon the notes of Curry, Nixon, Bennett, and Dobbins should be cancelled;" and by adding to the 10 line on page 21 of said transcript after the word "orator" the words "except as hereinbefore set forth."

And further your orator amends by like leave, &c., by striking out from the word "and" in the 2nd line to the 20th line, inclusive, of page 25 of said transcript, and inserting as follows: "And that upon the final hereing hereof your orator may be decreed to be entitled to the conveyance of all the right, title, and interest conveyed by W. P. Kerr to Daniel P. Rhodes, by deed dated November 26th, 1872, in and to the undivided one-fourth of the south half
100 of said fractional section thirteen, 38, 14 east, and that said James R. Doolittle convey the same to your orator; and that thereupon the said notes of Bennett, Nixon, Curry, and Dobbins be cancelled; and that your orator may have such other or further relief in the premises as the nature of this cause shall require, or as shall be agreeable to equity and good conscience."

And your orator prays that these amendments be held and considered as part of said original bill, and as in duty bound will ever pray, etc.

SOUTH PARK COMMISSIONERS,
By M. W. FULLER, *Their Solicitor.*

M. W. FULLER,
Of Counsel.

Endorsed: Filed June 12, 1882. W. H. Bradley, clerk.

Afterwards, to wit, on the 30th day of June, A. D. 1882, there was filed in said clerk's office a copy of the original bill and amendments in said entitled cause, which said copy is in the words and figures following, to wit:

101 *Copy of Original Bill and Amendments.*

UNITED STATES OF AMERICA, } ss:
State of Illinois, Cook County, }

Pleas before the Honorable William H. Barnum, one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the 18th day) of October, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States the 105th.

Present: Honorable William H. Barnum, one of the judges of the circuit court of Cook county, State of Illinois; L. L. Mills, State's attorney; John Hoffman, sheriff.

Attest: JACOB GROSS, *Clerk.*

Be it remembered that heretofore, to wit, on the 9th day of September, A. D. 1880, the South Park Commissioners, by Jos. F. Bonfield, Esq., its solicitor, filed in said court its certain bill of complaint, and caused to be issued out of and under the seal of said court the people's writ of summons, directed to the sheriff of Cook county to execute, which said bill of complaint and writ, together with the sheriff's return thereon endorsed, are in the words and figures following, to wit:

102 To the honorable the judges of the circuit court of Cook county, Illinois, in chancery sitting:

The South Park Commissioners, complainant herein, respectfully shows unto your honors that it is a municipal corporation, situated in the said county of Cook, and organized and existing under the laws of the State of Illinois.

That your orator became incorporated under and by virtue of an act entitled "An act to provide for the location and maintainance of a park for the towns of South Chicago, Hyde Park, an[illegible] Lake," approved and in force February 24th, 1869, and that by said act the commissioners of your orator were authorized and empowered to, and required within ninety days after the organization of your orator under said act, or as soon thereafter as practicable, *to* select for park purposes the following-described lands, situated in the towns of South Chicago, Hyde Park, and Lake, in Cook county, to wit:

Commencing at the southwest corner of Fifty-first street and Cottage Grove avenue, running thence south along the west side of Cottage Grove avenue to the south line of Fifty-ninth street; thence east along the south line of Fifty-ninth street to the east line of Hyde Park avenue; thence north on Hyde Park avenue to Fifty-sixth street; thence east along the south line of Fifty-sixth street to Lake Michigan; thence southerly along the shore of the lake to a point due east of the centre of section twenty-four (24), in township
103 thirty-eight (38) north, range fourteen (14) east; thence west through the centre of said section twenty-four (24) to Hyde Park avenue; thence north on the east line of Hyde Park avenue to

the north line of Sixtieth street, so called; thence west on the north line of Sixtieth street, so called, to Kankakee avenue; thence north on the east line of Kankakee avenue to Fifty-first street; thence east to the place of beginning.

Also a piece of land commencing on the southeast corner of Kankakee avenue and Fifty-fifth street; running thence west a strip two hundred (200) feet wide, adjoining the north line of Fifty-fifth street, along said Fifty-fifth street to the line between range thirteen (13) and fourteen (14) east; thence northeast of and adjoining said line a strip two hundred (200) feet wide to the Illinois and Michigan canal.

Also a parcel of land beginning at the southwest corner of Douglass place and Kankakee avenue, running thence south a strip of land one hundred and thirty-two (132) feet wide along the west side of said Kankakee avenue to a point one hundred and fifty (150) feet south of the south line of Fifty-first street.

Also a strip of land commencing at the intersection of Cottage Grove avenue and Fifty-first street, running thence east one hundred (100) feet in width on each side of the centre line of
104 Fifty-first street to a point one hundred (100) feet east of the centre line of Drexel avenue.

Also a strip of land extending north from the intersection of Fifty-first street with Drexel avenue one hundred (100) feet in width on each side of the centre line of said avenue to the north line of Forty-third street; thence northerly a strip of land two hundred (200) feet wide, until it meets or intersects with Elm street, in Cleaverville; thence northerly along said Elm street two hundred feet in width west to the east line of said street to its intersection with Oakwood avenue, which said lands, when acquired by your orator, as provided by said act, were to be held, managed, and controlled as a public park for the recreation, health, and benefit of the public, and free to all persons forever, subject to such necessary rules and regulations as should be adopted for the well ordering and government of the same.

And your orator shows that under the provisions of said act and subsequent acts amendatory thereof the territory above described as selected and set apart for park purposes have been enlarged, and that your orator did in apt time and as required by said act creating your orator select the lands above described for the purposes required and declared by said act.

105 Inserted by leave of court June 12th, 1882:

And your orator further shows unto your honors that in the year 1872 Mary C. Dobbins purchased of one William P. Kerr all the right, title, and interest of said Kerr in and to the undivided one-fourth ($\frac{1}{4}$) of the south half ($\frac{1}{2}$) of fractional section thirteen (13), township thirty-eight (38) north, range fourteen (14) east, in the county of Cook and State of Illinois, for the sum of $80,000, $30,000 in cash and the balance in two notes of Thomas S. Dobbins for $25,000 each, payable in one year and two years from the first of June, A. D. 1872, with interest thereon at 8% per annum; that said Kerr conveyed said undivided one-fourth for said Mary C. Dobbins

to one Daniel P. Rhodes, who executed a trust deed to Daniel Jones, as trustee, John B. Drake, successor in trust, to secure the two notes of Thomas S. Dobbins, above mentioned, and thereupon and on or about November 26th, A. D. 1872, said Rhodes conveyed said real estate to said Mary C. Dobbins, the conveyance to her containing an assumption on her part of the payment of said notes of Thomas S. Dobbins.

106 That in May, 1879, the National Bank of Illinois advanced sixty thousand dollars, which was paid to said W. P. Kerr upon the assurance that such advance was for the benefit of the South Park Commissioners, and would be paid by that corporation, and said bank received the notes of Thomas S. Dobbins before referred to, and also two notes, one of W. K. Nixon for $30,325, and one of Llewellyn Curry for $30,225, but the advance was not made on the credit of these notes.

That in November, 1879, the bank made an advance of $21,000 on the assurance that such advance was for the benefit of the South Park Commissioners and would be paid by that corporation, and said bank received the note of John I. Bennett for $21,000, but did not make the advance on the credit thereof.

That the $21,000 was paid to Mrs. Mary C. Dobbins, and she and her husband, Thomas S. Dobbins, executed and delivered to one Frederick A. Ingalls a deed of said undivided one-fourth.

And your orator represents unto your honors that, to wit, November 21st, 1879, at its regular meeting held on that day, your orator adopted the following resolution, to wit:

"Resolved, That the president of this board is hereby authorized to make such settlement and adjustment of the litigation
107 regarding the south half of fractional sec. 13, 38, 14, and such purchase of the title thereto as in his judgment may be advisable, and for that purpose to draw from the treasurer of this commission a sum not exceeding the sum of ninety thousand dollars before reporting the same to this board, and that the auditor is hereby instructed to sign the necessary warrant for said sum of money, or so much thereof as called for."

Struck out by leave of court June 12th, 1882:

(That in pursuance thereof, to wit, November 29, 1879, and February 26, 1880, respectively, two warrants for the said aggregate sum of $90,000, duly executed and signed by said auditor, were delivered to James Morgan, the then president of said South Park Commissioners, and the money was duly paid over to said Morgan thereon.)

Inserted by leave of court June 12th, 1882:

"That said resolution was adopted for the purpose of acquiring all the right, title, and interest of Mary C. Dobbins and her husband, Thomas S. Dobbins, in and to the said undivided one-fourth of said south half of fractional sec. 13, and in pursuance thereof a warrant for $82,800 was duly issued by your orator on the 24th day
108 of November, A. D. 1879, and was delivered and the money paid to the National Bank of Illinois, which thereupon de-

livered to James Morgan, then president of the Board of South Park Commissioners, the said notes of Thomas S. Dobbins for $25,000 each, the note of Curry for $30,225, and the note of Nixon for $30,325, the note of J. I. Bennett for $21,000, and a paper signed by F. A. Ingalls declaring that he held title of Mrs. Dobbins and husband to secure the said note of said Bennett.

"That on the 25th day of February, A. D. 1880, conveyances were made by R. E. Jenkins, assignee in bankruptcy of Dobbins, to F. I. Bennett, and from Bennett, to F. A. Ingals, and from Jenkins, receiver of Dobbins, to Ingalls, which were executed and delivered to Ingals on or about the 26th day of February, A. D. 1880, on which day your orator's warrant for $7,200 (making together $90,000 in all) was delivered to W. P. Kerr, and the money named therein paid to him, and said Curry executed a note for $7,200, which was handed to said Morgan, then president of your orator; and said Ingals made a further declaration that he held such title as was derived under the deeds of Jenkins to secure the notes of
109 Bennett and Curry, which was also delivered to said Morgan."

That, to wit, March 2d, 1880, the term of office of said James Morgan, as member of said Board of South Park Commissioners, and as the president of the same, expired.

That on, to wit, March 15th, 1880, the said James Morgan handed over to the Secretary of said South Park Commissioners, and took his receipt therefor, the following described documents, to wit:

1st. A trust deed, dated November 26th, 1872, from Daniel P. Rhodes to Daniel Jones, conveying thereby the undivided quarter (¼) of the south half (½) of fractional section 13, town. 38 north, range 14 east, of the 3rd P. M., except the north one-third of lot 3, and lots 9, 10, 11, and 15 and 16 in Phillips' subdivision of the west part of said half section, to secure the payment of two promissory notes of even date therewith made by Thomas S. Dobbins, payable to his own order, each for the principal sum of $25,000, bearing interest at 8% per annum, and due in two years from June 1st, 1872, a copy of which said trust deed, with the endorsements thereon, is
110 hereto annexed, marked "Exhibit A" and made a part of this bill of complaint.

2d. A note of Thomas S. Dobbins, dated November 26th, 1872, for the principal sum of $25,000, due June 1st, 1874, payable to his own order, and endorsed by said Thomas S. Dobbins and John C. Dunlevy, to which said note was attached a certain judgment note of Wilson K. Nixon, dated May 14th, 1879, payable sixty days after date, in the principal sum of $30,325, to the National Bank of Illinois. A copy of which said notes, with the endorsements thereon, respectively, is hereto attached, marked "Exhibit B" and made a part of this bill of complaint.

3d. A note of Thomas S. Dobbins, dated November 26th, 1872, for the principal sum of $25,000, due June 1st, 1874, payable to his own order, and endorsed by said Thomas S. Dobbins and John C. Dunlevy, to which note was attached a judgment note of Llewellyn Curry, dated May 15th, 1879, payable sixty days after date, in the principal sum of $30,225, to the National Bank of Illinois.

Copies of which said notes, together with the endorsements
111 thereon, respectively, are hereto attached, marked "Exhibit C" and make a part of this bill of complaint.

4th. A note of Llewellyn Curry, dated February 26th, 1880, payable to his own order on demand, in the sum of $7,200, and endorsed by him in blank.

A copy whereof, with the endorsements thereon, is hereto attached, marked "Exhibit D" and made a part of this bill of complaint.

5th. A judgment note of John I. Bennett, dated November 14th, 1879, payable to the National Bank of Illinois on demand, in the principal sum of $21,000, bearing interest after demand at 8% per annum.

A copy whereof, with the endorsements thereon, is hereto attached, marked "Exhibit E" and made a part hereof.

6th. A paper signed by Fred. A. Ingalls, declaring that he holds the title by quit-claim deed, dated November 12th, 1879, from Mary C. Dobbins and Thomas S. Dobbins, to the south half (½) of fractional section 13, township 38 north, range 14 east, of the 3rd P. M., in trust to secure the payment to the National Bank of Illi-
112 nois of a note of John I. Bennett to said bank for $21,000, due on demand.

On the reverse side of which said paper is another statement, signed by said Fred. A. Ingalls, declaring that he holds the title derived through certain deeds from Robert E. Jenkins, receiver and assignee of the estate of Thomas S. Dobbins, to Frank I. Bennett, and from Frank I. Bennett, all covering the interest of said Dobbins in the south half (½) of fractional section 13, 38, 14, first, to secure the payment of the within-named sum of $21,000, and, second, to secure the holder thereof the payment of $7,200 evidenced by a note of Llewellyn Curry, dated February 26th, 1880.

A copy of which said paper is hereto attached, marked Exhibit "F" and made a part of this bill of complaint.

That on or about the 15th day of April, 1880, the secretary of said Board of South Park Commissioners, under instructions from said board, directed and sent a letter to said James Morgan, asking whether the securities and deeds referred to are held for the benefit of the park authorities and are paid for by the park funds;
113 why, if so held and paid for, does the title not run to the park commissioners instead of to trustees? What do the notes of Nixon, Curry, and Bennett represent, and have the park authorities recourse against them on their notes in the event the title so held in trust does not satisfy the park advances?

Why do the deeds from Jenkins run to Bennett? Did he purchase for himself or for the park authorities? How were the Jenkins deeds procured, and what was paid for them, and for the quit-claim deed from Mary C. Dobbins and Thomas S. Dobbins? Why were deeds procured from Mary C. Dobbins, and also from her husband's assignee and receiver, or was the deed from Mary C. Dobbins simply for her dower?

In what order of time were the purchases and instruments made, to wit, the deeds from Jenkins, from Mary C. and Thomas S. Dob-

bins, and the purchase of the Curry and Nixon notes secured by the Dobbins trust deed and notes as collaterals? Do these deeds and securities convey or secure a good title to the undivided ¼ of the S. ½ of fractional section 13, 38, 14, except the north ⅓ of lot 3 and lots 9, 10, 11, 15, and 16, in Phillips' subdivision of the west part
114 of said half section, the property described in the trust deed, and is that all the property secured or conveyed? What was its value when taken possession of by the park authorities? What is now necessary to be done in order to perfect the title in the South Park Commissioners?

And your orator further represents unto your honors that its said secretary never received any answer from said Morgan to said communication, nor has your orator nor any of its officers, nor any one for it, ever received any communication, statement, or report from said Morgan of his actions and doings in the premises, either as to the disposition which he made of said sum of $90,000, or of the nature, extent, effect, or value of any conveyances, deed, or securities received by him in pursuance of the resolution of your orator above set forth, although the said communication from your orator was duly received by said Morgan, nor has the said Fred. A. Ingalls, although requested so to do, explained or stated to your orator, *as* to any one for it, the nature of his said trust, or the relation to whom or for whom in which he stands therein, nor anything per-
115 taining thereto, but neglects and refuses to state the same to your orator; and your orator, finding nothing in said declaration of trust by said Ingalls indicating that the same were for the benefit or behalf of your orator, by its regularly-appointed attorney directed to said Ingalls the following communication, to wit:

"CHICAGO, *June* 30, 1880.

" Fred. A. Ingalls, Esq.

" DEAR SIR: I have been requested by a resolution of the Board of South Park Commissioners to take such steps as in my judgment may seem advisable to perfect in the South Park Commissioners the title to that portion of the Phillips' tract known as the Dobbins' interest.

" The land is situated in the east of the south parks, and you are, I understand, the custodian of certain deeds from Mary C. and Thomas S. Dobbins and Robert E. Jenkins, as receiver and assignee of Thomas S. Dobbins, conveying to you the S. ½ of fr'c. sec. 13, 38, 14, in trust for certain purposes.

" It does not appear upon the face of the declaration in trust signed by you, and in possession of the South Park Commissioners,
116 that the title is held by you for the benefit of that corporation, though such I understand to be the fact.

" Will you please furnish me with copies of the deeds referred to, and with the facts connected with the transaction, as far as you know of your own knowledge, and whether you are now willing and in position to convey said property to the South Park Commissioners?

." Respectfully,

"JOS. F. BONFIELD."

And your orator represents that no answer whatever was ever received by said Bonfield nor your orator, nor any one for it, to said communication.

Struck out by leave of court June 12, 1882:

And your orator, having caused such information in the premises as could be obtained to be collected, submits to this honorable court, on information and belief, and charges the fact to be that the said sum of $90,000 paid over by your orator to said James Morgan was invested by said Morgan, not only in purchasing said trust deed and notes secured thereby, bearing date November 26th, 1872, but
117 also whatever interest the said Thomas S. Dobbins or any of his assignee- had in and to said south ½ of fractional section 13, 38, 14, except the north ⅓ of lot 3 and lots 9, 10, 11, 15, and 16 in Phillips' subdivision of the west part of said half section, prior to the execution of the trust deed from Daniel P. Rhodes to Daniel Jones, dated November 26th, 1872, as aforesaid, or which said Dobbins or his said assign- acquired subsequent thereto, and that the deeds, conveyances, and securities so purchased or acquired are the property of, or are held in trust for, your orator by the person or persons named as grantee or grantees or payee in said deeds, conveyances, and securities, and each of them, but that the exact nature, extent, and effect of the same is not known to your orator.

Inserted by leave of court June 12th, 1882:

"And your orator charges that the said sum of ninety thousand dollars was so paid out by your orator, as aforesaid, in the acquisition of, and your orator thereby did acquire, all the right, title, and interest of Mary C. Dobbins and Thomas S. Dobbins, her hus-
118 band, in and to the said undivided one-fourth of the south one-half of said fractional section thirteen, as well as the encumbrance thereon and the two notes of Thomas S. Dobbins secured thereby, and that said encumbrance should be decreed satisfied, and said James R. Doolittle, who holds, under direction of court, by conveyance from said Ingalls (as hereinbefore stated by way of supplement), should be decreed to convey to your orator, whereupon the notes of Curry, Nixon, Bennett, and Dobbins should be cancelled."

And your orator further represents that it is informed, and charges the fact to be, that the said John I. Bennett and the said Llewellyn Curry and Wilson H. Nixon, and each of them, deny any and all liability whatsoever in, through, or under the notes or securities by them respectively signed, as aforesaid.

And your orator further shows unto your honors that the said south half of said fractional section 13, T. 38 N., R. 14 E., lies wholly within the territory hereinbefore described and bounded, as selected by your orator under and by virtue of said act of the Legislature of the State of Illinois, for the purposes in said act set forth.

119 And your orator further shows unto your honors that John C. Dunlevy, Mary C. Dobbins, Thomas S. Dobbins, William P. Kerr, John I. Bennett, Llewellyn Curry, Wilson K. Nixon, Frank I. Bennett, The National Bank of Illinois, and Robert E. Jenkins,

assignee and receiver of the estate of Thomas S. Dobbins, Charles B. Phillips, and Elizabeth Ann Phillips, have, or claim to have, some right or interest in the above-described premises, the nature and extent of which is unknown to your orator, "except as hereinbefore set forth."

Inserted by leave of court, June 12th, 1882:

Now, therefore, your orator, being without remedy in the premises except in a court of equity, prays your honors that the said James Morgan, Fred. A. Ingalls, John C. Dunlevy, Mary C. Dobbins, Thomas S. Dobbins, William P. Kerr, John I. Bennett, Llewellyn Curry, Wilson K. Nixon, Frank I. Bennett, The National Bank of Illinois, Robert E. Jenkins, assignee and receiver of the estate of Thomas S. Dobbins, Charles B. Phillips, and Elizabeth Ann Phillips be made parties defendant to this bill of complaint, and
120 that they make full, true, perfect, and complete answer hereto, respectively, but not under oath (their answers under oath being hereby expressly waived), and that they, and each of them, bring into this hono able court whatever papers, instruments, or documents — in their possession or control, or in the possession or control of either of them, touching or relating to the matters herein set forth, and that they respectively disclose to your honors and your orator all their doings in the premises, and any information relative to the title to the said south half of fractional section 13, 38, 14 pertinent to your orator's interest therein; and that the said James Morgan and Fred. A. Ingalls may especially answer and set forth—

First. Whether the securities and deeds above referred to are held for the benefit of the park authorities and are paid for by park funds.

Second. Why, if so held and paid for, does the title not run to the park commissioners instead of to trustees.

Third. What do the notes of Nixon, Curry, and Bennett
121 represent, and have the park authorities recourse against them or their notes in the event the title so held in trust does not satisfy the park advances.

Fourth. Why do the deeds from Jenkins run to Bennett? Did he purchase for himself or for the park authorities?

Fifth. How were the Jenkins deeds procured, and what was paid for them and for the quit-claim deed from Mary C. Dobbins and Thomas S. Dobbins?

Sixth. Why were deeds procured from Mary C. Dobbins and also from her husband, assignee and receiver, or was the deed from Mary C. Dobbins simply for her dower?

Seventh. In what order of time were the purchases and instruments made, to wit: the deeds from Jenkins, from Mary C. and Thomas S. Dobbins, and the purchase of the Curry and Nixon notes, secured by the Dobbins trust deed and notes as collateral?

Eighth. Do these deeds and securities convey or secure a
122 good title to the undivided $\frac{1}{4}$ of the S. $\frac{1}{2}$ of frc. sec. 13, T. 38 N., R. 14 E., except the N. $\frac{1}{3}$ of lot 3 and lots 9, 10, 11, 15 and
16 in Phillips' subdivision of the west part of said $\frac{1}{2}$ section, the

property described in the trust deed, and is that all the property secured or conveyed?

Ninth. What was paid for the property so secured or conveyed, and for the securities deposited by said Morgan with the secretary of your orator, as aforesaid; what further, if any, steps have been taken, is now necessary to be done than those indicated by the document heretofore described to you, or either of you, to perfect the title in the South Park Commissioners.

Struck out by leave of court, June 12, 1882:

And that if, upon a final hearing hereof, your honors shall find, as your orator claims and alleges, that your orator is beneficially, though not nominally, entitled to any of the deeds, conveyances, or securities mentioned herein or which may be disclosed upon the trial hereof, your honors shall decree an absolute conveyance or conveyances of the same to your orator by the person, persons, or corporation now holding the same, and that your orator
123 may have such other or further relief in the premises as the nature of this cause shall require *as* to your honors shall seem meet.

Inserted by leave of court, June 12, 1882:

"That the original defendant, William P. Kerr, departed this life on or about the 15th day of April, A. D. 1882, testate, and by his will devised and bequeathed all his property, real, personal, and mixed, unto his wife, Susie M. Kerr, and his daughter, Rosa L. Kerr, and his son, Joseph B. Kerr, as executors, to be by them divided into seven shares, and one equal seventh part thereof to be given to his, said Kerr's, wife and six children, share and share alike, with full power to dispose of his, said Kerr's, real estate.

"That by bill of review duly herein filed on the 12th day of June, A. D. 1882, this cause was duly revived as to said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, and they made parties defendant hereto, and said cause is revised as to them; and your orator hereby makes them such parties and avers as in and by its said bill
124 and the amendments thereto it has already averred and doth aver.

"Your orator further shows that on the 29th day of May, A. D. 1882, by direction of this court, and upon his own offer to do so, in his answer as amended contained, said Frederick A. Ingalls has conveyed the real estate in said bill mentioned to one James R. Doolittle, who resides in and is a citizen of the State of Wisconsin; and your orator makes said James R. Doolittle party defendant hereto, and charges that he holds property in trust for your orator."

Inserted by leave of court June 12th, 1882:

"And that upon the final hearing hereof your orator may be decreed to be entitled to the conveyance of all the right, title, and interest conveyed by W. P. Kerr to Daniel P. Rhodes by deed dated November 26th, 1872, in and to the undivided one-fourth of the south half of said fractional section thirteen, 13, 38, 14 east, and that

said James R. Doolittle convey the same to your orator, and that thereupon the said notes of Bennett, Nixon, Curry, and Dobbins be cancelled; and that your orator may have such other or further relief in the premises as the nature of this cause shall require, or as shall be agreeable to equity and good conscience."

125 May it please your honors to grant unto your orator the people's writ of summons, directed to the sheriff of Cook county, commanding him to summon the said James Morgan, Fred A. Ingalls, John C. Dunlevy, Mary C. Dobbins, Thomas S. Dobbins, William P. Kerr, John I. Bennett, Llewellyn Curry, Wilson K. Nixon, Frank I. Bennett, The National Bank of Illinois, Robert E. Jenkins, assignee & receiver of the estate of Thomas S. Dobbins, Charles B. Phillips, and Elizabeth Ann Phillips to be and appear before this honorable court on a certain day therein named, and then and there full, true, perfect, and complete answer make to this your orator's bill of complaint, and to stand to and abide by whatever orders or decrees that may be made herein, and your orator will ever pray, etc.

[CORPORATION SEAL.] SOUTH PARK COMMISSIONERS,
By J. R. WALSH, *President.*
JOS. F. BONFIELD, *Sol.*
H. W. HARMON,
Secretary Bd. South Park Commissioners.

For the exhibits see original bill.

(Endorsed): Filed June 30th, 1832. W. H. Bradley, clerk.

126 Afterwards, to wit, on the seventh day of July, in the July term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

THE SOUTH PARK COMMISSIONERS
vs.
JAMES MORGAN, FREDERICK A. INGALLS, *et al.* } In Chancery.

And now this day come the parties, by their respective counsel, and on motion of Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors, &c., the time to answer specified in the order herein entered on the twelfth day of June last is hereby extended to the seventeenth day of July instant.

Afterwards, to wit, on the seventeenth day of July, A. D. 1882, came Susie M. Kerr and others, by their solicitors, and filed in said clerk's office their answer to the amended bill in said entitled cause, which said answer is in the words and figures following, to wit:

127 *Answer of Susie M. Kerr et al.*

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss:

United States Circuit Court, Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS
vs.
SUSIE M. KERR, ROSA L. KERR, and JOSEPH B. KERR, Executors, etc., Impleaded with JAMES MORGAN *et al.*

Joint answer of Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors of the last will and testament of William P. Kerr, deceased, defendants to the bill of complain*ant* as amended.

These defendants, saving to themselves all right of exception to the manifold inaccuracies and uncertainties in said amended bill of complaint, for answer thereunto, or to so much thereof as those defendants are advised is material for them to make answer unto, answering, say:

These defendants admit that complainant is a corporation,
128 and as such authorized and required by the laws of the State of Illinois to acquire the land as described in said bill for a public park as alleged.

These defendants admit that Mary C. Dobbins purchased of said William P. Kerr in 1872 all the right, title, and interest of said Kerr in and to the undivided one-fourth of the south half of fractional sectional 13, township 38 north, range 14 east, of third principal meridian, in the county of Cook, State of Illinois, and that the conveyance therefor was made to Daniel P. Rhodes, and that said Rhodes executed a trust deed thereon to Daniel Jones as trustee (John B. Drake, successor in trust), dated November 26th, 1872, to secure the two notes of Thomas S. Dobbins for the sum of twenty-five thousand dollars each, and interest, copies of which said trust deed and notes are attached to the original bill, marked Exhibit "A" and "B," "C," to which defendants refer for greater certainty.

That afterwards said Rhodes, by quit-claim deed, conveyed his interest in said premises to Mary C. Dobbins, said conveyance containing an assumption on her part of the payment of said notes of Thomas S. Dobbins.

These defendants deny that the consideration for said conveyance from said Kerr to said Rhodes was eighty thousand dollars, as
129 alleged in said bill, but charges the truth to be that the consideration therefor was, in addition to the sum of money paid and received, to wit, $80,000, a further agreement on the part of the purchaser to furnish certain valuable assistance in the way of additional counsel in and about certain litigation then pending between said Kerr and the South Park Commissioners, and which assistance said Kerr estimated to be the more valuable consideration for the making and delivering by him, said Kerr, of the conveyance to said Rhodes as aforesaid.

That in May, 1879, the National Bank of Illinois loaned said William P. Kerr, on the note of W. K. Nixon for $30,325 and note of Llewellyn Curry for the sum of $30,225, with the said two notes of Thomas S. Dobbins as collateral thereto, the sum of $59,900, the said notes of Nixon and Curry containing power of attorney authorizing the sale of said collaterals for default in payment in the usual form, copies of which said notes of said Nixon and Curry are attached to the original bill, marked Exhibits "B" and "C," to which reference is made for greater certainty; but whatever agreements or promises or representations were made to said bank by any of the South Park Commissioners, if any were made, were made without the consent, knowledge, or authority of said William P. Kerr or of these defendants.

130 That in November, 1879, the said bank loaned to John I. Bennett the sum of $21,000 on the note of said Bennett, with the declaration of Fred. A. Ingalls as security, copies of which said note and declaration of trust are attached to the original bill as Exhibits "E" and "F," to which reference is made for greater certainty, but what representations or assurances were made to said bank as to the complainant, if any, were made without the knowledge, consent, or authority of said William P. Kerr or of these defendants.

These defendants admit that Mary C. Dobbins and her husband conveyed to Fred. A. Ingalls all their interest in the south fractional half of section thirteen, township thirty-eight north, range fourteen east, of the third principal meridian, in Cook county, Illinois, by deed dated November 12, 1879, which deed was delivered to said Ingalls on November 14, 1879.

These defendants admit that said complainant, on November 21st, 1879, passed the resolution set forth in said bill, but deny that said resolution was adopted for the purpose of acquiring all the right, title, and interest of Mary C. Dobbins and her husband, Thomas S. Dobbins, in and to the undivided one-fourth of said south half of fractional section 13, as in said amended bill alleged.

131 These defendants admit that, in pursuance of said resolution, complainant issued a warrant for $82,800, on the 24th day of November, 1879, payable to the National Bank of Illinois, and delivered the same to said bank, and that said bank thereupon delivered to the president of said complainants, Board of Commissioners, the said notes of Nixon and Curry, together with the said two notes of Thomas S. Dobbins (with the said trust deed securing the same), collateral to said Nixon and Curry notes, and also the said note of John I. Bennett for $21,000, and the paper signed by said Ingalls declaring that he held title derived from Mrs. Dobbins and her husband to secure said note of said Bennett.

These defendants admit that on February 25, 1880, the conveyances from R. E. Jenkins, assignee in bankruptcy of Dobbins, to Frank I. Bennett, and of said F. I. Bennett to F. A. Ingalls, and of said Jenkins, receiver of Dobbins, to said Ingalls in February, 1880, as alleged, and admit the delivery of complainant's warrant to said W. P. Kerr, on said February 26, 1880, for the sum of $7,200, and

that for said $7,200 the note of said Curry for $7,200 was delivered to the president of said Board of South Park Commissioners, with a further declaration of said Ingalls that he held such title as was derived from the Jenkins deeds to secure said John I. Bennett note for $21,000, and said Curry note for $7,200; copy of which
132 said $7,200 — is attached to the original bill marked Exhibit "D," to which reference is made for greater certainty.

These defendants admit the delivery of all the said Nixon, Curry, Dobbins, and Bennett notes, the Rhodes trust deed and declaration of Ingalls to the secretary of said complainant.

These defendants have no knowledge of any of the correspondence between the said complainant or its solicitor and James Morgan, or between said complainant or its solicitor and said Ingalls, alleged in said bill, and leave said complainant to make proof thereof as it may be advised it is material or necessary.

These defendants, further answering, deny that the said sum of ninety thousand dollars so paid out by complainants was paid out in the acquisition of, and that complainants did thereby acquire all the right, title, and interest of, Mary C. Dobbins and Thomas S. Dobbins, her husband, in and to the said undivided one-fourth of the south one-half of said fractional section thirteen, as well as the encumbrance thereon, and the two notes of Thomas S. Dobbins secured thereby, or that said James R. Doolittle should be decreed to convey to complainants as in said amended bill of complaint is charged, but these defendants admit that the said notes of Curry, Nixon, and Bennett should be cancelled and surrendered, and aver that
133 the said sum of ninety thousand dollars should stand only as a credit to said complainants for so much money paid to these defendants on account of the large sum of money found to be due and payable to these defendants by said complainant in accordance with the terms of the decree of the United States circuit court heretofore entered by Mr. Justice Harlow, as hereinafter recited.

These defendants, further answering, admit that the said south half of said fractional section thirteen, township thirty-eight north, range fourteen east, of the 3rd P. M., lies wholly within the territory in said bill described, as selected by complainant as in said amended bill of complaint is alleged; and these defendants further aver that said complainant has been in the actual, exclusive possession and enjoyment of all of said south fractional half of said section thirteen since the 27th day of August, 1870, and still continues in such possession.

These defendants, further answering, admit that the said William P. Kerr departed this life on or about the 15th day of April, 1882, testate, bequeathing his property to these defendants as executors, to be by them divided as in said amended bill of complaint is alleged.

These defendants, further answering, admit the substitution of James R. Doolittle as trustee in the place of and stead of Fred.
134 A. Ingalls, as in said amended bill of complaint alleged, but deny that said Doolittle holds said property in trust for com-

plainant as in said amended bill alleged, but aver that said Doolittle holds said property in trust for these defendants.

These defendants, further answering, aver that on or about the 8th day of October, A. D. 1878, in the circuit court of the United States for the northern district of Illinois, in a certain cause then and there pending, wherein William P. Kerr was complainant and the South Park Commissioners and others were defendants, on the chancery side of said court, before his honor Justice Harlan, a decree was entered touching the lands in controversy in this suit and other lands in the words and figures following, to wit:

This cause coming on to be heard upon the consolidated bill, answers, and replications, and the proofs, and having been argued by counsel, and this court being sufficiently advised in the premises, it is ordered, adjudged, and decreed that the defendant, The South Park Commissioners, pay to the complainant, William P. Kerr, and his assignees the value of the premises on the 27th day of August, A. D. 1870, known and described as the south fractional half of section thirteen, in township thirty-eight north, of range fourteen east, of the third principal meridian, except lots 9, 10 and 15, in Chas. B. Phillips' subdivision of 26 acres off the west side of
135 the S. W. ¼ of said section thirteen, according to plat of same recorded in the recorder's office of Cook county, in book 98 of maps, p. 9, and the east half of said southwest quarter of said section thirteen, together with interest thereon from the twenty-seventh day of August, A. D., 1870, at the rate of six per cent. per annum, upon the conveyance of said premises by the complainant, William P. Kerr, and his assignees claiming under him since the commencement of this suit by deed, which shall release to the South Park Commissioners all interest of the said complainant and his assignees.

And it is further ordered that the value of said premises required to be paid be ascertained as follows:

A jury shall be empannelled in this court, on the law side thereof, to hear the evidence submitted by both parties, and said jury shall determine by their verdict the value of the land hereinbefore described on the twenty-seventh day of August, A. D., 1870, the time when possession was taken by the South Park Commissioners, and the verdict shall be certified by the clerk to the chancery side of this court, and the amount so found shall be considered as the value of said premises on the day aforesaid, unless set aside or changed by the further order of this court.

136 And it is further ordered that the complainant, William P. Kerr, make a deed and procure deeds to be made by all persons claiming under him since the commencement of this suit, conveying to the South Park Commissioners the premises aforesaid, when they shall pay the amount found to be due, with interest from the twenty-seventh day of August, A. D., 1870, at the rate of six per centum.

And the court denies any relief to the complainant as to the east

half of the southwest quarter of section thirteen aforesaid, and it is ordered that the bill of complaint be dismissed as to that part of the premises.

And it appearing to the court that the South Park Commissioners have commenced proceedings to condemn the undivided one-quarter of the west half of the southeast quarter of section twenty-four, in township thirty-eight north, of range fourteen east, of the third principal meridian, another of the tracts described in the bill belonging to the complainant:

It is ordered that all questions touching the same be reserved for the further order of the court. It is further ordered that the question of costs be postponed for the further consideration and order of the court.

That afterwards an appeal was taken from said circuit court to the Supreme Court of the United States in said cause, when such
137 proceedings were had that the decree of said circuit court was affirmed, and on the — day of March, 1882, the mandate of said supreme court was filed in the said circuit court ordering said circuit court to proceed with the carrying out of said decree; that by virtue of said decree now in full force and effect the complainants, in the original and amended bill of complaint filed in this cause, is justly indebted to the said defendants, as representatives of said Kerr, for the value of all the land contained in the south fractional half of section 13 aforesaid, excepting eighty acres, being the east half of the southwest quarter of said section 13, and further excepting certain lots specified in said decree, containing about three acres of land; that, including the land in controversy in this cause, said South Park Commissioners, complainants in this bill, are indebted to said defendants for the value of at least 137 acres of land, with interest thereon from August 27th, 1870, all of said land being in said south fractional half of said section 13, and being of a value far in excess of the sum so alleged by complainants herein to have been advanced by said complainants to said defendant Kerr in his lifetime; that the said Kerr, in his lifetime, and the said defendants, as representatives of said Kerr since the decease of said Kerr,
138 have been always ready and anxious to have the amount due from said South Park Commissioners to said Kerr, or to his representatives, determined in accordance with the decree of the said circuit court of the United States, but hitherto said defendants have been unable to procure a trial, as provided by said decree, to ascertain the amount of compensation justly due from said complainants to said defendants.

And said defendants aver the truth to be that, during the spring of 1879 and after the entry of the decree before Justice Harlan aforesaid, negotiations were pending between the president and two other members of the said South Park Commission and said Kerr in his lifetime, looking to a settlement of the entire litigation between said complainant and said Kerr; that an agreement of settlement was arrived at and reduced to writing (a copy of which is attached to

Morgan's answer herein, marked Exhibit "A," excepting the date thereof).

That the said president and two members of said Board of Commissioners, on or about May 14, 1879, represented to said Kerr that if he would sign said agreement and leave the same subject to the option of said Board of Commissioners to adopt and ratify the same, that then the National Bank of Illinois would loan to said
139 Kerr about $60,000 on the security of the said Dobbins notes and Rhodes trust deed, which said sum said Kerr needed for uses and purposes of his own in no manner connected with the purchase of any outstanding title or interest in said south half of section thirteen aforesaid, which said commissioners well knew; and, further, that no negotiation for the purchase of Mary C. Dobbins' title or interest in said premises had at that time been entered upon, nor was any such negotiation entered upon until more than three months thereafter.

Said president and two other commissioners further agreeing with said Kerr that in consideration of said Kerr so signing said agreement, and so procuring the said loan of said bank in the manner aforesaid, that the said complainant would take care of said loan and protect said securities, and that whatever sum of money should be advanced by said complainant in so doing should stand as a part payment to said Kerr under the decree entered by Justice Harlan as aforesaid, with interest thereon at the rate of six per cent. per annum from the date of such advance.

That said Kerr, relying upon these representations and promises, made the loan of the National Bank of Illinois on the Nixon and Curry notes, with the said Dobbins notes and Rhodes trust
140 deed as collateral thereto, as above set forth; and these defendants aver that said Kerr never, in any manner whatsoever, authorized said complainant to take up said securities or any of them from said bank in any manner save only under the terms of said agreements.

And, further, that no part or portion of said $59,900 so loaned by said bank to said Kerr was ever used in the purchase of any interest in or title to any portion of said premises, to wit, south half of said fractional section, therein.

These defendants aver that thus matters stood until November 14th, 1879, when said Kerr, in his lifetime, arranged with Mary C. Dobbins for the purchase of her interest in said south half of section thirteen, the consideration for which said purchase was the payment of $21,000, and in addition thereto an agreement on the part of said Kerr to satisfy and cancel a certain judgment in the said circuit court of the United States for the northern district of Illinois, entered therein on the — day of —, 187–, in favor of said Kerr against said Mary C. Dobbins for the sum of $—, no part of which said judgment had at the time of said purchase been satisfied.

That in order to procure the funds to make said cash pay-
141 ment the said loan by said bank on the note of said John I. Bennett for $21,000, with the declaration of trust of said Fred.

A. Ingalls as security, was effected, said Bennett acting at that time as the agent of said Kerr, and the conveyance aforesaid from said Mary C. Dobbins and husband being made to said Ingalls for said Kerr, the title being placed in said F. A. Ingalls in order that he might make said declaration to secure the payment of said note to said bank.

That said loan was so made without any knowledge on the part of said Kerr that any of the said South Park Commissioners here made any representations to said bank in regard thereto, and said Kerr had no knowledge of any such representations, if any were made, and never authorized the making thereof.

These defendants further aver that afterwards, on, to wit, the 21st day of November, 1879, the said Board of South Park Commissioners, in regular session, had laid before it the said written agreement so as aforesaid signed by said Kerr (a copy of which is attached to Morgan's answer herein, marked Exhibit "A"), and that after the full reading thereof before said board, all the members thereof being then present, and after the discussion of the same, the further consideration thereof was postponed to a future meeting; and at said meeting, after the further consideration of said agreement had
142 been postponed, said board adopted the resolution set out in complainant's bill; and thereafter, on, to wit, November 24th, 1879, the said warrant of said complainant for $82,800 was issued, payable to the said bank, and was delivered to said bank, and the said notes of Nixon and Curry, with the said notes of T. S. Dobbins and Rhodes' trust deed as collateral thereto, were delivered to the president of said Board of Commissioners.

That some two months subsequent to the purchase of said securities from the said bank by said complainant as aforesaid said Kerr had made arrangements for the purchase by him, said Kerr, of whatever interest in said premises one Robert E. Jenkins had, as the assignee in bankruptcy of said Thomas S. Dobbins and as the receiver of the estate of said Dobbins, when the president of said Board of Commissioners proposed to said Kerr that if he, said Kerr, would cause the same to be conveyed to some person who should give a declaration that he held such title so derived to secure the payment of said note of John I. Bennett for $21,000 and to secure the payment of an accommodation note to be given to represent $7,200, that the complainants would advance to said Kerr said sum of $7,200, representing to said Kerr that said additional security
143 was desired by said complainants; that thereupon said Kerr did so purchase said interest of said Jenkins, and caused the same to be conveyed to said Fred. A. Ingalls as above set forth, and that the said note of said Curry for $7,200 was given and the second declaration of said Ingalls made as above in carrying out said agreement, said Kerr receiving the said warrant of complainant for said sum of $7,200, it being agreed between said president and said Kerr that said sum of $7,200 should stand as a part payment on the amount due said Kerr from said complainants under the said decree entered as aforesaid in this court by Justice Harlan, with in-

terest thereon at six per cent per annum from the date of such advance:

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that — there is any other matter, cause, or thing in said complainant's said amended bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and prove as this honorable
144 court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

SUSIE M. KERR,
ROSA L. KERR, AND
JOSEPH B. KERR,
Executors of the Last Will & Testament of Wm. P. Kerr, Dec'd, Defendants,
By JOHN C. DUNLEVY, *Solicitor.*

LEAMING & THOMPSON, *of Counsel.*

(Endorsed:) Filed July 17, 1882. Wm. H. Bradley, clerk.

145 And afterwards, to wit, on the eighteenth day of July, in the July term of said court, A. D. 1882, in the record of the proceedings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

THE SOUTH PARK COMMISSIONERS
vs.
JAMES MORGAN, F. A. INGALLS, *et al.* } In Chancery.

This cause coming on upon the application of Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors and devisees of W. P. Kerr, deceased, for leave to take additional testimony in said cause, it is ordered that leave be granted to said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors, &c., to take additional testimony herein between the date of the entry hereof and including the third day of August next.

145*a* Afterwards, to wit, on the 26th day of August, in the July term of said court, A. D. 1882, in the record of the proceed-

ings thereof in said entitled cause, before Hon. Thomas Drummond, circuit judge, is the following entry, to wit:

THE SOUTH PARK COMMISSIONERS
vs.
SUSIE M. KERR, ROSA L. KERR, and JOSEPH B. Kerr, Executors and Devisees of William P. Kerr, Deceased, and Others. } In Chancery. Bill.

And

CHARLES B. PHILLIPS
vs.
THE SOUTH PARK COMMISSIONERS *et als.* } Cross-bill.

And

JOHN I. BENNETT
vs.
THE SOUTH PARK COMMISSIONERS *et als.* } Cross-bill.

This cause having been heard prior to the death of William P. Kerr, one of the then defendants herein, and said William P. Kerr having departed this life testate on or about the fifteenth day of April, A. D. 1882, and his will having been duly admitted to probate in the State of Ohio on or about May 31st, A. D. 1882, and said
145*b* cause having been duly revived as to Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, his executors and devisees under said will, and they having duly appeared and answered herein, as well as the defendant, James R. Doolittle, and thereupon this cause coming on again to be heard upon the bill of complaint as amended and upon the demurrer of Elizabeth Ann Phillips and the answers of said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr and James R Doolittle, Frederick A. Ingalls, John I. Bennett, Frank I. Bennett, Charles B. Phillips, and the replications thereto; and upon the evidence taken and reported by the master herein and the documentary evidence adduced upon the hearing and arguments being had, and the court being now fully advised in the premises, the court finds that in the year of our Lord, 1872, said William P. Kerr sold to Mary C. Dobbins the undivided one-fourth part of the south half of fractional section thirteen (13), town. thirty-eight (38) north, of range fourteen (14) east, of third (3d) principal meridian, in Cook county, Illinois, save and except the north one-third of lot three (3), and excepting also lots
145*c* nine (9), ten (10), eleven (11), fifteen (15), and sixteen (16), in C. B. Phillip's subdivision of the western part of said half section, for the sum of eighty thousand dollars, thirty thousand dollars paid in cash and fifty thousand dollars in two notes of Thomas S. Dobbins for twenty-five thousand ($25,000.00) dollars each, due in one and two years, respectively, from June 1, 1872, with interest at eight per cent. per annum, payable semi-annually, and said Kerr conveyed the same by deed dated October 12th, 1872, to Daniel P. Rhodes, of the city of Cleveland, in the State of Ohio, who gave a

trust deed upon said property to secure said two notes of Thomas S. Dobbins, part of the purchase price of said property to Daniel Jones, trustee, and John B. Drake, successor in trust, dated November 26th, 1872; and thereupon said Rhodes conveyed the same to said Mary C. Dobbins by deed dated November 26th, 1872, subject to said trust deed, the notes secured by which she assumed and covenanted to pay; that subsequently said Dobbins' notes came into the possession of the complainant, and in
145*d* November, 1879, the title of said Mary C. Dobbins in and to said real estate was conveyed to F. A. Ingalls by deed of said Mary C. Dobbins and Thomas S., her husband, dated November 12th, 1879, and in February, 1880, all interest, if any, of Jenkins, receiver, &c., and Jenkins, assignee in bankruptcy of Thomas S. Dobbins, was conveyed to said Ingalls by deed, as follows: Deed of Robert E. Jenkins, receiver, &c., to Ingalls, dated February seventeenth, 1880; deed of Jenkins, assignee, &c., to F. I. Bennett, dated February twenty-fifth, 1880, and deed of F. I. Bennett to Ingalls, dated February 25th, 1880, and that said Ingalls has, upon his offer to do so contained in his answer, as amended under direction of the court, conveyed to James R. Doolittle, and that under the facts and circumstances disclosed upon the pleadings and evidence herein the said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors and devisees of said W. P. Kerr, deceased, are entitled upon payment of the the sum of ninety ($90,000) thousand dollars to the complainant, with interest on the sum of eighty-two thousand ($82,000.00) eight — ($800.05) dollars, parcel of said
145*e* ninety thousand ($90,000.00) dollars, from November twenty-ninth, 1879, and on the sum of seven thousand two hundred ($7,200.00) dollars, the balance of said ninety thousand dollars ($90,000.00), from February twenty-sixth, 1880, at six per cent. per annum, to have the title to the said undivided one-fourth of south one-half of fractional section thirteen (13), town. thirty-eight (38), range fourteen (14), vested in defendant, F. A. Ingalls, by the deeds of Mary C. Dobbins and her husband and Jenkins, receiver and assignee, etc., and now vested in James R. Doolittle, conveyed to them, said executors and devisees of said Kerr; and that if said payment is not made within the time herein fixed, then that the complainant, the South Park Commissioners, is entitled to have said land conveyed to it upon payment to said executors and devisees of the sum of three thousand four hundred and fifty-four dollars and seventeen cents and interest thereon at eight per cent. from February 26th, 1880; and that, in either event, the trust deed of Rhodes to Jones in the pleadings and evidence described should be declared satisfied, and the notes of Thomas S. Dobbins for twenty-five
145*f* thousand dollars ($25,000.00) each, of W. K. Nixon for thirty thousand three hundred and twenty-five dollars ($30,325.00), L. Curry for thirty thousand two hundred and twenty-five dollars ($30,225.00), L. Curry for seven thousand two hundred ($7,200) dollars, and J. I. Bennett for twenty-one thousand ($21,000.00) dollars, be canceled.

And the court further finds that the contract in the pleadings

mentioned, as attempted to be entered into between the South Park Commissioners and said Kerr, of date of May fourteenth, 1879, or November, 1879, was never consum-ated nor operative and binding upon said complainant, and that there is no equity in the cross-bill of complaint of Charles B. Phillips, filed herein, and that the cross-bill of John I. Bennett is unnecessary.

It is therefore ordered, adjudged, and decreed that the bill of complaint be, and it is hereby, dismissed as to the defendants, Frank I. Bennett, Charles B. Phillips, and Elizabeth Ann Phillips, at the costs of the complainant, and that the cross-bills of Charles B. Phillips and John I. Bennett be, and they are hereby, severally dismissed without prejudice.

It is further ordered, adjudged, and decreed that the said defendants, Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr,
145*g* executors and trustees as aforesaid, pay to the complainant, the South Park Commissioners, the sum of eighty-two thousand eight hundred ($82,800.00) dollars, with interest from November twenty-ninth, 1879; and the sum of seven thousand two hundred ($7,200.00) dollars, with interest from the twenty-sixth day of February, 1880, within ninety days from the date of the entry hereof, the interest thereon being six per cent.; and that thereupon said James R. Doolittle convey to said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors, &c., the undivided one-fourth of the south one-half of fractional section thirteen (13), township thirty-eight (38) north, range fourteen (14) east, in Cook county, Illinois, as held by him as trustee; and it is further ordered, adjudged, and decreed that if said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors, etc., shall fail to make such payment within the time so fixed as aforesaid, then the said South Park Commissioners shall pay into court the sum of three thousand four hundred and fifty-four dollars and seventeen cents ($3,454.17), for the use of said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors, etc., together
145*h* with eight per cent. interest thereon from the 26th day of February, 1880, and the proper deposit charges thereon; and thereupon said James R. Doolittle shall convey to said South Park Commissioners said undivided one-fourth part of the south half of fractional section thirteen (13) aforesaid, held by him as trustee, who shall thereupon hold the same discharged of the encumbrance created by the trust-deed of Daniel P. Rhodes to Daniel Jones, trustee aforesaid; but if said South Park Commissioners fail to make such last-mentioned payment within ten days after the expiration of said ninety days, and the failure by defendants Kerr to pay said corporation as aforesaid, then this bill shall stand dismissed at complainant's costs.

And it is further ordered, adjudged, and decreed that upon compliance with this decree by said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors, &c., or on failure thereof upon the conveyance of said real estate to said South Park Commissioners, the notes of said Thomas S. Dobbins, secured by the trust-deed of Rhodes to Jones, trustee, for twenty-five thousand dollars each, and the notes

Rhodes, of the

of J. I. Bennett for twenty-one thousand dollars, of L. Curry
145½ for thirty thousand three hundred and twenty-five dollars, of W. K. Nixon for thirty thousand three hundred and thirty-five dollars, and of L. Curry for seventy-two hundred dollars, be, and they are hereby, declared canceled and satisfied. And it is also ordered that said cause be dismissed as to the defendants William K. Nixon, National Bank of Illinois, Llewellyn Curry, Thomas S. Dobbins, Mary C. Dobbins, R. E. Jenkins, assignee and receiver, and John C. Dunlevy, at costs of the complainant.

And it is ordered that the costs herein to be taxed (except the costs in respect to the defendants, as to whom this cause is dismissed, and the costs upon the cross-bills aforesaid) be paid in equal shares by said complainant and said defendants.

And the said Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors, etc., pray an appeal to the Supreme Court, which is allowed on their giving bond according to law.

146 *Certificate of Evidence.*

In the United States Circuit Court for the Northern District of Illinois. In Chancery.

THE SOUTH PARK COMMISSIONERS
vs.
F. A. INGALLS, SUSIE M. KERR, and Others.

This certifies that the above-entitled cause, to which one William P. Kerr was then a party defendant, came on for hearing before the Hon. Thomas Drummond, judge of said circuit court, upon the 16th day of March, A. D. 1882, which hearing was continued into and was concluded upon the 17th day of March, A. D. 1882, and said cause taken under advisement.

The said cause was heard on said days upon the pleadings and issues made up as they then stood, and upon the following evidence:

On behalf of the complainant, the South Park Commissioners, was introduced in evidence—

First. Deed of William P. Kerr and wife to Daniel P. Rhodes, conveying an undivided one-quarter part of the south fractional sectional 13, excepting certain lots recorded December 6th,
147 1872, and dated October 12th, which deed is as follows, to wit:

Deed.

This indenture, made this twelfth (12) day of October, in the year of our Lord one thousand eight hundred and seventy-two, between Wm. P. Kerr, of Licking county, Ohio, and Susie M. Kerr, his wife, party of the first part, and Daniel P. Rhodes, of Cleveland, Ohio, party of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of ($160,000.00) one hundred and sixty thousand dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, do alien, remise, release, convey, and confirm unto the said party of the

second part and his heirs and assigns forever all that part, tract, or parcel of land described as follows, to wit: being the undivided fourth part of the south half of fractional sec. (13) thirteen, town (38) thirty-eight N., of range (14) fourteen E., in Cook county, Ill., save and except the north one-third of lot 3, and excepting also lots
9, 10, 11, 15, & 16 in C. B. Phillips' subdivision of the western
148 part of said half sec., together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said Wm. P. Kerr, for himself, his heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the second part, [his] heirs and assigns, that he has not made, done, committed, or executed any act or acts, thing or things, whatsoever whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now or at any time hereafter, shall or may be impeached, charged, or encumbered in any manner or way whatsoever.

149 In witness whereof the said party of the first party have hereunto set their hands and seals the day and year first above written.

WM. P. KERR. [SEAL.]
SUSIE M. KERR. [SEAL.]

Signed, sealed, and delivered in presence of—
ROSA L. KERR.
WM. LYON.

STATE OF OHIO, }
Licking County, } *ss:*

I, William Lyon, notary public in and for said county, in the State aforesaid, do hereby certify that Wm. P. Kerr and Susie M. Kerr, who are personally known to me as the persons whose names are subscribed to the foregoing deed as having executed the same, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth, and the said Susie M. Kerr, wife of the said Wm. P. Kerr, having been by me examined separate and apart and out of the hearing of her said husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, to-
150 gether with all her rights and privileges under the homestead exemption laws so-called of the State of Illinois, acknowledged

that she had freely and voluntarily executed the same and relinquished her dower and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws so-called without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal this twelfth day of October, in the year of our Lord one thousand eight hundred and seventy-two.

[NOTARIAL SEAL.] WILLIAM LYON,
Notary Public, Licking County, Ohio.

Entered.

JOSEPH POLLOCK,
County Clerk.

[Endorsed:] No. 72235. Filed for record this 6th day day of Dec'r, A. D. 1872, and recorded Dec. 18, 1872. James Stewart, recorder.

STATE OF ILLINOIS, } ss:
County of Cook, }

151 I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the sixth day of December, A. D. 1872, as document No. 72235, and recorded in book 127 of records, at page 105.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this fourteenth (14th) day of February, A. D. 1882.

[SEAL.] JAS. W. BROCKWAY,
Recorder.

152 Second. Deed from Daniel P. Rhodes to Mary C. Dob-ins conveying the same property, dated November 26th, 1872, and recorded April 6th, 1876, in words and figures following, to wit:

Deed.

This indenture, made this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and seventy-two, between Daniel P. Rhodes and Sophia L. Rhodes (his wife), of the city of Cleveland, county of Cuyahoga, and State of Ohio, party of the first part, and Mary C. Dobbins, of Chicago, Cook county, Illinois, party of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of $160,000.00 (one hundred and sixty thousand dollars), in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and the said party of the second part released and discharged therefrom, ha[ve] remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey, and quit-claim, unto

the said party of the second part, her heirs and assigns, for-
153 ever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following-described lot, piece, or parcel of land, to wit: the undivided one-fourth (¼) part of the south half (S. ½) of fractional section thirteen (13), township thirty-eight (38) north, range fourteen (14) east, of the third (3rd) principal meridian, in Cook county, Illinois, save and except the north one-third (⅓) of lot three (3), and excepting also lots nine (9), ten (10), eleven (11), fifteen (15), and sixteen (16) in C. B. Phillips' subdivision of the western part of said half section.

This conveyance is made expressly subject to a certain trust-deed, dated June 19th, 1872, executed by said Daniel P. Rhodes to one Daniel Jones, trustee, which said trust-deed was made to secure two certain promissory notes for the sum of twenty-five thousand dollars ($25,000), each becoming due in one and two years, respectively, from June first, A. D. 1872, with interest at eight per cent. per annum, payable semi-annually, and which encumbrance the said party of the second part hereby assumes and agrees to pay and to save said party of the first part harmless therefrom; to have
154 and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, her heirs and assigns forever.

And the said Daniel P. Rhodes and Sophia L (his wife), party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale or execution, or otherwise, and especially under act entitled "An act to exempt homesteads from sale or execution," passed by the General Assembly of the State of Illinois, A. D. 1851, and approved February 11, A. D. 1851, and an act entitled "An act to amend an act entitled 'An act to exempt homesteads from sale or execution,' passed by said Assembly A. D. 1857, and approved February 17, A. D. 1857.

In witness whereof the said part of the first part have here-
155 unto set their hands and seals the day and year first above written.

DANIEL P. RHODES. [SEAL.]
SOPHIA L. RHODES. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. BARBER.
GUSSIE R. HANNA.

STATE OF OHIO, }
Cuyahoga County, } *ss:*

I, Josiah Barber, a notary public in and for said county, in the State aforesaid, do hereby certify that Daniel P. Rhodes & Sophia L. Rhodes, personally known to me to be the same persons whose names

are subscribed to the foregoing deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth; and the said Sophia L. Rhodes, wife of the said Daniel P. Rhodes, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and also
156 by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and by virtue of all laws of this State relating to the exemption of, without compulsion, of her said husband, and that she does not wish to retract the same.

Given under my hand and official seal this 21st day of November, A. D. 1873.

[NOTARIAL SEAL.] JOSIAH BARBER,
Notary Public.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

I, Benjamin S. Cogswell, clerk of the court of common pleas, a court of record of Cuyahoga aforesaid, do hereby certify that Josiah Barber, before whom the annexed acknowledgement was taken, was at its date a notary public in and for said county, duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting, and believe his signature thereto is genuine, and that the annexed instrument is executed and acknowl-
157 edged according to the laws of the State of Ohio.

In testimony whereof I hereunto subscribe my name and affix the seal of said court this twenty-first day of November, A. D. 1873.

[OFFICIAL SEAL.] BENJAMIN S. COGSWELL, *Clerk.*

No. 79759. Filed for record April 6th, A. D. 1876, at 11 a. m.
JAMES STEWART, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the sixth day of April, A. D. 1876, as document No. 79759 and recorded in book 575 of records, at page 357.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this fourteenth (14th) day of February, A. D. 1882.

[SEAL.] JAS. W. BROCKWAY, *Recorder.*

158 Third. Trust deed from Daniel P. Rhodes to Daniel A. Jones; John B. Drake, successor in trust, conveying the same property to secure the two notes of Thomas S. Dobbins of $25,000, each dated, November 26th, 1872, and recorded December 11th, 1872, in words and figures following, to wit:

Trust Deed.

This indenture, made *made* this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and seventy-two, between Daniel P. Rhodes, of the city of Cleveland, Ohio, party of the first part, and Daniel Jones, of the city of Chicago, county of Cook and State of Illinois, party of the second part, as trustee, as hereinafter specified (and in case of the death, absence, or removal from said county of Cook, refusal or inability to act of said party of the second part, then John B. Drake, of the said city of Chicago, shall be, and he hereby is, appointed and made successor in trust to said party of the second part under this deed for the uses and purposes hereinafter expressed with the same power and authority as said trustee, witnesseth:

That whereas T. S. Dobbins has executed his two cer-
159 tain promissory notes, bearing even date herewith, payable to his own order and by him endorsed and delivered to Wm. P. Kerr, of Granville, Licking Co., Ohio, said notes being for the sum of twenty-five thousand dollars ($25,000), each bearing 8 per cent. interest, payable semi-annually on the first days of June and December in each year, and due in two years from June 1st, 1872, at the banking-house of Tyler, Wrenn & Co., Chicago, and which notes were given for part of the purchase-money of the land hereinafter described;

And whereas the said party of the first part, desirous of securing the prompt and full payment of said promissory note- and interest that may accrue thereon, in whose hands soever the same may be:

Now, therefore, the said party of the first part, in consideration of the premises and for the purposes aforesaid, and in the further consideration of one dollar to me in hand paid by the said party of the second part, the receipt whereof is hereby confessed, have and do hereby grant, bargain, sell, and convey unto the said party of the second part, his successor in trust aforesaid, and his and their heirs and assigns, all the following-described lands and premises
160 situate in the county of Cook and State of Illinois, to wit:

The undivided one-fourth part of the south half of fractional section thirteen (13), town. thirty-eight (38), range fourteen (14) E., save and except therefrom the north $\frac{1}{3}$ of lot 3, and lots 9, 10, & 11 and 15 and 16 in Phillips' subdivision of the west part of said $\frac{1}{2}$ sec., and being the same interest conveyed by said Kerr to said Rhodes by deed of the date of Oct. 12th, 1872, and for part payment of which said notes were given—

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, to the said party of the second part, his successor in trust aforesaid, and his and their heirs and assigns, forever, in trust, nev-

ertheless, that in case of default in the payment of the said promissory notes and interest, or any part thereof, according to the tenor and effect of said notes, or in case of the breach of any of the covenants or agreements herein mentioned, then on the application of the legal holder of said promissory notes, or either of them, to sell and dispose of the said premises and all the right, title, bene-
161 fit, and equity of redemption of the said party of the first part, his heirs and assigns therein, at public auction, at the north door of the court-house, in the city of Chicago, in the State of Illinois, or on said premises, or any part thereof, as may be specified in the notice of such sale, for the highest and best price the same will bring in cash, three weeks notice having been previously given of the time and place of such sale by advertisement in the Chicago Legal News, or in any newspaper at that time published in said city of Chicago, and to make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds or avails of such sale and the purchase-money paid thereon, after first paying all costs of advertising, sale, and conveyance, including the reasonable fees and commissions of said party of the second part and all other expenses of this trust, including all moneys advanced for insurance, taxes, and other liens or assessments, with interest thereon at ten per cent. per annum, then to pay the principal of said notes, whether
162 due and payable by the terms thereof or not, and interest due on said notes up to the time of such sale, rendering the overplus (if any) unto the said party of the first part, his legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to the application of the purchase-money, which sale or sales so made shall be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, through, or under said party of the first part or any of them.

And in case of the death of the grantor, Daniel P. Rhodes aforesaid, and of a foreclosure as provided in an act of the General Assembly of the State of Illinois entitled "An act to protect widows and orphans from the sacrifice of their property by sale upon mortgages and trust deeds," approved March 30th, A. D. 1869, upon default and application made to the said party of the second part or his successor in trust as aforesaid by any *cestui que trust* under this
163 deed it shall and may be lawful for the said party of the second part in his own name or otherwise, by suit in any court of competent jurisdiction, to obtain a decree for the sale and conveyance of the whole or any part of said premises for the purposes herein specified by said party of the second part as such trustee or as special commissioner under order of court, and out of the proceeds of any such sale to first pay the costs of such suit, including his reasonable charges as solicitor therein in addition to and besides the costs of advertising sale, conveyance, and moneys advanced, with interest as above provided, then to pay the amount found by the court to be due and payable upon the indebtedness aforesaid.

And in case of any suit or proceeding at law or in equity wherein said party of the second part shall be made a party by reason of his trusteeship under this deed he shall be allowed and paid his reasonable costs, charges, attorney's and solicitor's fees in such suit or proceeding by said party of the first part, and the same shall be a further charge and lien upon said premises under this deed, to be paid out of the proceeds of sale thereof, if not otherwise paid by
164 said party of the first part.

And in consideration of the money paid as aforesaid to the said party of the first part, and in order to create a first lien and incumbrance on said premises under this deed for the purposes aforesaid, and to carry out the foregoing specific application of the proceeds of any sale that may be made by virtue hereof, the said party of the first part does hereby release and waive all right under and benefit of the exemption and homestead laws of the State of Illinois in and to the lands and premises aforesaid and the proceeds of sale thereof, and agree to surrender up possession thereof to the purchasers at such sale, peaceably, on demand.

And the said party of the second part, with or without readvertising, is hereby authorized and empowered to postpone or adjourn said sale from time to time at his discretion, and also to sell the said premises *en masse* or in separate parcels, as he may prefer or think best.

And the said Daniel P. Rhodes, for himself and his heirs, executors, and administrators, covenants and agrees to and with
165 the said party of the second part, his successor in trust, hereinbefore named, and their assigns that at the time of the ensealing and delivery of these presents he is well seized of said premises in fee-simple, and has good right, full power, and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid.

And in case of the refusal or neglect of said party of the first part, or either of them, thus to pay taxes said party of the second part, or his successor in trust, or the holder of said notes, or either of them, may pay such taxes, and all moneys thus paid, with interest thereon at ten per cent. per annum, shall become so much additional indebtedness, secured by this deed of trust, and to be paid out of the proceeds of sale of the lands and premises aforesaid, if not otherwise paid by said party of the first part, a reconveyance of said premises to be made to said party of the first part, his heirs or assigns, at the expense, on full payment of all the indebtedness aforesaid and performance of the covenants and agreements made herein by the party of the first part.

And it is stipulated and agreed that in case of default in
166 any of said payments of principal or interest, according to the tenor and effect of said promissory notes aforesaid, or either of them or any part thereof, or of a breach of any of the covenants or agreements herein by the party of the first part, his executors, administrators, or assigns, then and in that case the whole of said principal sum hereby secured and the interest thereon to the time of sale may at once, at the option of the legal holder thereof,

become due and payable and the said premises be sold in the manner and with the same effect as if the said indebtedness had matured.

And said party of the first part, for himself and his heirs and assigns, does further covenant and agree to and with said party of the second part, his successor in trust aforesaid, and his heirs and their assigns, that in case of a sale and conveyance as aforesaid of said premises, any deed or deeds of conveyance made in pursuance of such sale shall be *prima facie* evidence of the due compliance with and performance of the terms, conditions and requirements of this deed of trust by the party of the second part or his successor in trust aforesaid in advertising and making such sale and
167 conveyance to the extent of the recitals contained in such deed or deeds.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

DAN'L P. RHODES. [SEAL.]

Signed, sealed, and delivered in presence of—

The name of Daniel Jones inserted in place of Henry D. Monroe before the acknowledgment.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Charles P. Silva, a notary public in and for and residing in said city, in said county, in the State aforesaid, do hereby certify that Daniel P. Rhodes, who is personally known to me as the same person described in and who executed the within trust deed, appeared before me this day in person and acknowledged that he signed, sealed and delivered the same as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of all right under and benefit of the exemption and homestead laws of the State of Illinois in and to the premises therein de-
168 scribed, with the appurtenances and the proceeds of sale thereof.

Given under my hand and notarial seal this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and seventy-two, at said city of Chicago.

[NOTARIAL SEAL.] CHARLES P. SILVA,
Notary Public.

No. 73066. Filed for record this 11th day of Dec., A. D. 1872, and recorded Dec. 17th, 1872.

JAMES STEWART, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true

and correct copy of the record of a certain instrument filed in my office the 11th day of December, A. D. 1872, as document No. 73066, and recorded in book 190 of records at page 483.

In testimony whereof I have hereunto set my hand and affixed my official seal at Chicago, this fourteenth (14th) day of February, A. D. 1882.

[SEAL.] JAS. W. BROCKWAY, *Recorder.*

169 Fourth. Deed of Mary C. Dobbins and husband to Frederick A. Ingalls, conveying the same property, dated November 12th, 1879, and recorded November 14th, 1879, in words and figures following, to wit:

170 The grantors, Mary C. Dobbins, in her own right, and Thomas S. Dobbins, her husband (who joins herein for the conveyance of the interest of said Mary C. Dobbins), of Chicago, in the county of Cook and State of Illinois, for the consideration of twenty thousand dollars, convey and quit claim to Fred. A. Ingalls, of the same place, all interest in the following described real estate, to wit, the south fractional half of section thirteen (13), in township thirty-eight (38) north, of range fourteen (14) east, of the third principal meridian, situate in the county of Cook and State of Illinois.

Dated this twelfth day of November, A. D. 1879.

MARY C. DOBBINS. [SEAL.]
THOMAS S. DOBBINS. [SEAL.]

STATE OF ILLINOIS, } ss:
Cook County, }

I, G. Gilbert Gibons, a notary public in and for said county of Cook, do hereby certify that Mary C. Dobbins and Thomas S. Dobbins, her husband, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing, appeared before me this day in person and acknowledged

171 that they signed, sealed, and delivered the said instrument as their free and voluntary act and deed, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12th day of November, A. D. 1879.

[Seal G. Gilbert Gibons, Notary Public, Cook Co., Ill's.]

G. GILB'R. GIBONS,
Notary Public in and for Cook County, Illinois.

No. 244,948.

Filed for record Nov. 14th, A. D. 1879, at 3 o'clock p. m.

JAS. W. BROCKWAY,
Recorder.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true

and correct copy of the record of a certain instrument filed in my office the 14th day of November, A. D. 1879, as document No. 244,948, and recorded in book 899 of records at page 208.

In testimony whereof I have hereunto set my hand and affixed my official seal at Chicago this fourteen- (14th) day of February, A. D. 1882.

[SEAL.] JAS. W. BROCKWAY,
Recorder.

172 Fifth. Deed of R. E. Jenkins, receiver of the estate of Dobbins, etc., in the case of Hunt *vs.* Dobbins, dated February 17th, 1880, and recorded March 20th, 1880, to F. A. Ingalls, in words and figures following, to wit:

173 This indenture witnesseth that the grantor, Robert E. Jenkins, receiver of the estate and effects of Thomas S. Dobbins, of Chicago, Cook county, Illinois, for the consideration of fifty dollars, conveys and quit-claims to Fred. A. Ingalls, of the same place, all the right, title, and interest of the said Thomas S. Dobbins and of the said Robert E. Jenkins as such receiver in and to the hereinafter-described premises.

Whereas in a certain chancery suit in the United States circuit court for the northern district of Illinois, wherein Morris R. Hunt is complainant and Thomas S. Dobbins and others are defendants, the said Jenkins was appointed receiver by said court of the estate and effects of said Dobbins:

Now, therefore, in accordance with orders made and entered by said court in said cause on January 12, A. D. 1880, and February 16th, 1880, the said Jenkins conveys and quit-claims unto the said Ingalls the real estate mentioned in said orders, and described as follows, to wit: the south half of fractional section thirteen (13), township thirty-eight (38) north, range fourteen (14) east, situated in the county of Cook and State of Illinois.

Dated this seventeenth day of February, A. D. 1880.

174 ROBERT E. JENKINS, [SEAL.]
Assignee as Aforesaid.

STATE OF ILLINOIS, } ss:
Cook County, }

I, Ullman Strong, a notary public in and for the county and State aforesaid, do hereby certify that Robert E. Jenkins, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowled that he signed, sealed, and delivered the said instrument as his free and voluntary act as such receiver, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 17th day of February, A. D. 1880.

[Seal Ullman Strong, Notary Public, Cook County, Ill's.]

ULLMAN STRONG,
Notary Public.

No. 262,614. Recorded Mar. 20, 1880, 3 p. m.
JAS. W. BROCKWAY,
Recorder.

STATE OF ILLINOIS, } ss:
Cook County, }

I, James W. Brockway, recorder of deeds in and for said county in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed
175 in my office the 20th day of March, A. D. 1880, as document No. 262,614, and recorded in book 971 of records, at page 413.

In testimony whereof I have hereuto set my hand and affixed my official seal, at Chicago, this fourteenth (14th) day of Febuary, A. D. 1882.

[SEAL.] JAS. W. BROCKWAY,
Recorder.

176 Sixth. Deed of R. E. Jenkins, assignee in bankruptcy of Thomas S. Dobbins to F. I. Bennett, dated February 25th, 1880, and recorded March 20th, 1880, in the words and figures following, to wit:

177 This indenture, made and entered into this 25th day of February, in the year one thousand eight hundred and eighty, by and between Robert E. Jenkins, of Chicago, in the county of Cook and State of Illinois, assignee in bankruptcy of the estate and effects of Thomas S. Dobbins, bankrupt, and also of said county and State, party of the first part, and Frank I. Bennett, of Chicago, in the county of Cook and State of Illinois, party of the second part, witnesseth:

That whereas in accordance with the provisions of the Revised Statutes of the Unnited States—title, "bankruptcy"—a petition was filed in the district court of the United States for the northern district of Illinois on the 20th day of April, A. D. 1878, by the said Thomas S. Dobbins, and such proceedings were had in said court under said petition; that afterwards, and on the 13th day of June, A. D. 1878, the said Thomas S. Dobbins was duly adjudged and declared a bankrupt, and afterwards, on the 20th day of July, A. D. 1878, the said Robert E. Jenkins was duly appointed assignee of the estate and effects of said bankrupt by H. N. Hibbard, Esq'r, one of the registers in bankruptcy of said court, which said appointment wa- thereafter duly approved and confirmed by said
178 court, and on the 20th day of July, A. D. 1878, said register, by an instrument in writing, under his hand and the seal of said court, did convey and assign unto the said Robert E. Jenkins, as such assignee, all the estate, real and personal, of the said bankrupt, Thomas S. Dobbins, including all the property, of whatsoever kind, of which the said bankrupt was possessed, or in which he was interested, or which he was entitled to have on said 20th day of April, A. D. 1878 (excepting only such property as is excepted by the 5045th section of said Revised Statutes;)

And whereas said bankrupt, Thomas S. Dobbins, appears to have been, on said last-mentioned date, possessed of or entitled to an interest in the real estate and property hereinafter mentioned, and the said Robert E. Jenkins, assignee as aforesaid, having first given notice by publication once a week for three consecutive weeks pursuant thereto, and on the 20th day of November, A. D. 1879, did offer for sale and sell the said real estate and property at public auction, and at said sale the said party of the second part was the highest bidder and became the purchaser thereof for the price and sum of fifty dollars, which sale having been duly reported to said court was thereafter, to wit, on the 2nd day of December, A. D. 1879, approved
179 and confirmed by said court; and whereas said court did, on the day and year last named, order and direct said Robert E. Jenkins, assignee, to execute and deliver to said party of the second part a deed for said real estate so sold to said party of the second part, as aforesaid, conveying the said real estate to said purchaser in accordance with the terms of said sale:

Now, therefore, in consideration of the premises and of the sum of fifty dollars, to said assignee in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, the said Robert E. Jenkins, assignee, as aforesaid, party of the first part aforesaid, has remised, released, sold, conveyed, and quit-claimed, and by these presents does hereby remise, release, sell, and convey, and forever quit-claim, unto the said party of the second part all the right, title, interest, estate, claim, and demand of the said bankrupt which he had on the said 20th day of April, A. D. 1878, and of the said Robert E. Jenkins, as assignee aforesaid (subject to all unpaid taxes and to all liens and encumbrances, unless by the terms of said sale expressly excepted) in and to the following described real estate, to wit:

Undivided one-quarter (¼) interest in the south fractional half (½) of section thirteen (13), township thirty-eight (38), range
180 fourteen (14), east of the third principal meridian, Cook county, Illinois, the same being known as the "Kerr tract," and located in the east division of the South Park, to have and to hold the same, together with all the right, title, and interest of the said Thomas S. Dobbins, bankrupt aforesaid, which he had in and to said property at the date of the commencement of the said proceedings in bankruptcy, with all the improvements, rights, privileges, and appurtenances thereunto belonging, and all the interest which the said party of the first part acquired in and to said property by virtue of his appointment as assignee aforesaid, but subject to all unpaid taxes and tax liens, and to all liens and incumbrances, unless expressly excepted, released, or discharged by the orders of said court concerning said sale, and subject to all the terms and conditions of said sale, unto the said party of the second part and to his heirs and assigns forever.

In testimony whereof the said Robert E. Jenkins, assignee as aforesaid, has hereunto set his hand and seal the day and year first above written.

ROBERT E. JENKINS. [SEAL.]
Assignee as Aforesaid.

STATE OF ILLINOIS, } ss:
Cook County, }

181 I, E. R. Richards, a notary public in and for and residing in said county of Cook and State of Illinois, do hereby certify that Robert E. Jenkins, assignee in bankruptcy of the estate and effects of Thomas S. Dobbins, the bankrupt named in the foregoing instrument of writing, and who is personally known to me to be such assignee, and to be the same person whose name is subscribed to the said instrument, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing, as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Witness my hand and notarial seal this twenty-fifth day of February, A. D. 1880.

[Seal E. R. Richards, Notary Public, Cook Co., Ill's.]

E. R. RICHARDS,
Notary Public.

No. 262,615. Recorded Mar. 20, 1880, 3 p. m.
JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed
182 in my office the 20th day of March, A. D. 1880, as document No. 262,615, and recorded in book 981 of records, at page 131.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this fourteenth (14th) day of February, A. D. 1882.

[SEAL.] JAS. W. BROCKWAY, *Recorder.*

183 Seventh: Deed of F. P. Bennett to Frederick A. Ingalls, conveying said property, dated February 25th, 1880, and recorded March 25th, 1880, in the words and figures following, to wit:

184 The grantor, Frank I. Bennet, of the —, in the county of Cook and State of Illinois, for the consideration of one dollars, conveys and quit-claim- to Fred. A. Ingalls, of the city of Chicago, county of Cook and State of Illinois, all interest in the following-described real estate:

The undivided one-quarter (¼) interest in the south fractional half (½) of section thirteen (13), township thirty-eight (38), range fourteen (14) east, of the third (3d) principal meridian, Cook county, Illinois, the same being known as the "Kerr tract," and located in the east division of the South Park, situated in the county of Cook, in the State of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State.

Dated this twenty-fifth day of February, A. D. 1880.

FRANK I. BENNETT. [SEAL.]

Signed, sealed, and delivered in presence of—

——— ———.

STATE OF ILLINOIS, } ss:
Cook County }

I, Charles Carpenter, a notary public in and for the county of Dupage, in the State aforesaid, do hereby certify that Frank
185 I. Bennett, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 25th day of February, A D. 1880.

[Charles Carpenter, Notarial Seal, Downer's Grove, Dupage Co., Ill.]

CHARLES CARPENTER,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Richard S. Thompson, a notary public in and for the said county of Cook, in the State aforesaid, do hereby certify that Frank I. Bennett, personally known to me to be the same person whose name is subscribed to the foregoing (attached) instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument, as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

186 Given under my hand and notarial seal this twenty-second (22nd) day of March, A. D. 1880.

[R. S. Thompson, Notarial Seal, Cook County, Ill's.]

RICHARD S. THOMPSON,
Notary Public.

No. 263,332. Filed for record M'ch 25th, A. D. 1880, at 12 o'clock m.

JAS. W. BROCKWAY, *Recorder.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 25th day of March, A. D. 1880, as document No. 263,332, and recorded in book 943 of records, at page 445.

In testimony whereof I have hereunto set my hand and affixed my official seal at Chicago this fourteenth (14th) day of February, A. D. 1882.

[SEAL.] JAS. W. BROCKWAY, *Recorder.*

187 Eighth. Record of suit at law in the United States circuit court for the northern district of Illinois, entitled William P. Kerr *vs.* Mary C. Dobbins, commenced August 4th, 1877, to the October term, A. D. 1877. Service endorsed September 13, 1877, and declaration filed December 1st, 1878, in words and figures following, to wit:

188 *Summons.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Circuit Court of the United States of America.

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you to summon Mary C. Dobbins, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto William P. Kerr of a plea of trespass on the case upon promises, to his damage, as he alleges, of seventy-five thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago
189 aforesaid, this 4th day of August, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the 102nd year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ by reading the same to and within the presence and hearing of Mary C. Dobbins, therein named, on the 13 day of September, 1877.

J. S. HILDRUP,
U. S. Marshal,
By J. STILLWELL, *Deputy.*

Endorsed: Filed Sept. 13, A. D. 1877. W. H. Bradley, clerk.

190 *Declaration.*

In the United States Dist. Court for the Northern Dist. of Illinois.

WILLIAM P. KERR *vs.* MARY C. DOBBINS.

The plaintiff, Wm. P. Kerr, a citizen and resident of the State of Ohio, complains of the defendant, Mary C. Dobbins, for that whereas on the 26 day of November, A. D. 1872, at the county of Cook and State of Illinois, one Daniel P. Rhodes was indebted to plaintiff in the sum of fifty thousand dollars, evidence by two promissory notes of twenty-five thousand dollars each of said date, together with interest at eight per cent. from and after June 1st, A. D. 1872, which said

two promissory notes of $25,000 each were executed by Thomas S. Dobbins payable to his own order on or before June 1st, A. D. 1874, at the banking-house of Tyler, Wrenn & Co., Chicago, and which were endorsed in blank by said T. S. Dobbins on said day and delivered to said plaintiff, and which said notes and money were secured to be paid by a certain "trust deed" on the undivided one-fourth (¼) part of south half (S. ½) of fractional section thirteen (13), township thirty-eight (38) north, range fourteen (14) east, Cook county,
191 Illinois, which was duly recorded in said Cook county on December 11th, A. D. 1872, being land then owned by said Daniel P. Rhodes, which said notes and "trust deed" had been given as part of the purchase of said land and for which said Daniel P. Rhodes *did* afterwards, to wit, on the 21st day of November, A. D. 1873, made, executed, and delivered to said Mary C. Dobbins a deed of conveyance in fee-simple, which deed is recorded in the land records of said Cook county, in book No. 573, page 357, which said deed Mary C. Dobbins received and accepted from said T. S. Rhodes and caused the same to be recorded and which contained the following words and figures, to wit:

"This conveyance is made expressly subject to a certain trust deed, dated June 19, A. D. 1872, executed by said Daniel P. Rhodes to one Daniel Jones, trustee, which said trust deed was made to secure two certain promissory notes for the sum of twenty-five thousand ($25,000) dollars, each becoming due in one and two years, respectively, from June 1st, A. D. 1872, with interest at eight per cent. per annum, payable semi-annually, and which incum-
192 brance the party of the second part hereby assumes and agrees to pay to save the said party of the first part harmless therefrom."

Wherefore the said Mary C. Dobbins, defendant, became liable to pay to the plaintiff the amount of said note as aforesaid, according to the lien of said "trust deed," and being so liable, the defendant Mary C. Dobbins, in consideration thereof, promised to pay to plaintiff the said sum of fifty-thousand ($50,000) dollars, according to the tenor and effect of said notes and "trust deed."

And for that whereas the defendant, on the 1st day of Oct., A. D. 1878, in the county aforesaid, was indebted to the plaintiff in the sum of seventy thousand ($70,000) dollars for money before that time lent by plaintiff to the defendant at her request; and in the like sum for money before that time paid and expended by the plaintiff for the use of the defendant at *his* request; and in like sum for lands sold for the use of defendant and at *his* request; and in like sum for interest before that time paid and expended by the plaintiff for the use of defendant, and at *his* request; and in like sum for money found to be due from the defendant to the plaintiff, and being
193 so indebted the defendant, in consideration thereof, then and there promised the plaintiff to pay him, on request, the sum of money so due to him as aforesaid. Yet the defendant, though requested, has not paid the same or any part thereof to the plaintiff,

but refuses so to do, to the damage of the plaintiff of seventy thousand ($70,000) dollars, and therefore he brings his suit, etc.

JOHN C. DUNLEVY,
Attorney for Plaintiff.

Assumpsit.

In the U. S. Dist. Court for the Northern Dist. of the State of Illinois

WILLIAM P. KERR *vs.* MARY C. DOBBINS.

John C. Dunlevy, the attorney and agent in fact for the above-named William P. Kerr, plaintiff, makes oath and says that Mary C. Dobbins, the above-named defendant, is indebted to the plaintiff, William P. Kerr, in the sum of seventy thousand ($70,000) dollars for money due to plaintiff from the defendant, which said sum is still due to plaintiff from the said defendant, after allowing him all his just credits, deductions, and set-offs.

JNO. C. DUNLEVY.

Subscribed and sworn to before me this 1st day of November, A. D. 1878.

[SEAL.] FRANK I. BENNETT,
Notary Public.

194 Ex. A.

Cert'f'd Copy of Deed. Ex. A Above.

This indenture, made this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and seventy-two, between Daniel P. Rhodes and Sophia L. Rhodes (his wife), of the city of Cleveland, county of Cuyahoga, and State of Ohio, party of the first part, and Mary C. Dobbins, of Chicago, Cook county, Illinois, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of $160.000.00, one hundred and sixty thousand dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part released and discharged therefrom, ha- remised, released, sold, conveyed, and quit-claimed, and by these presents do remise, release, sell, convey, and quit-claim, unto the said party of the second part, her heirs and assigns, forever, all the right, title, interest, claim, and demand which the said party of the first part have in and to the following-described lot, piece, or parcel of land, to wit.

195 The undivided one-fourth (¼) part of the south half (S. ½) of fractional section thirteen (13), township thirty-eight (38) north, range fourteen (14), east of the third (3rd) principal meridian, Cook county, Illinois, save and except the north one-third (⅓) of lot three (3), and excepting also lots nine (9), ten (10), eleven (11), fifteen (15), and sixteen (16) in C. B. Phillips' subdivision of the western part of said half section. This conveyance is made expressly subject to a certain trust deed, dated June 19th, 1872, executed by said Daniel P. Rhodes to one Daniel Jones, trustee, which said trust deed was made to secure two certain promissory notes for the sum of

twenty-five thousand dollars ($25,000), each becoming due in one and two years, respectively, from June first, A. D. 1872, with interest at eight per cent. per annum, payable semi-annually, and which incumbrance the said party of the second part hereby assumes and agrees to pay, and to save said party of the first part harmless therefrom.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest,
196 and claim whatever of the said party of the first [part,] either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, her heirs and assigns, forever.

And the said Daniel P. Rhodes and Sophia L. (his wife), party of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise, and especially under act entitled "An act to exempt homestead from sale on execution," passed by the General Assembly of the State of Illinois, A. D. 1851, and approved February 11, A. D. 1851, and an act entitled "An act to amend an act entitled an act to exempt homesteads from sale on execution," passed by said Assembly A. D. 1857, and approved February 17, A. D. 1857.

In witness whereof the said part- of the first part have hereunto set their hands and seals the day and year first above written.

DAN'L P. RHODES [SEAL.]
SOPHIA L. RHODES. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. BARBER.
GUSSIE R. HANNA.

197 STATE OF OHIO, } ss:
Cuyahoga County, }

I, Joseph Barber, a notary public in and for said county, in the State aforesaid, do hereby certify that Daniel P. Rhodes & Sophia L. Rhodes, personally known to me to be the same persons whose names are subscribed to the foregoing deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act for the uses and purposes therein set forth ; and the said Sophia L. Rhodes, wife of the said Daniel P. Rhodes, having been by me examined separate and apart and out of the hearing of her husband, and, the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, and also by me being fully informed of her rights under the homestead laws of this State, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, and also all her rights and advantages under and

by virtue of all laws of this State relating to the exemption of
198 homesteads without compulsion of her said husband, and *and* that she does not wish to retract the same.

Given under my hand and official seal this 21st day of November, A. D. 1873.

[NOTARIAL SEAL.] JOSIAH BARBER,
Notary Public.

THE STATE OF OHIO, } ss:
Cuyahoga County, }

I, Benjamin S. Cogswell, clerk of the court of common pleas, a court of record of Cuyahoga county aforesaid, do hereby certify that Josiah Barber, before whom the annexed acknowledgment was taken, was at its date a notary public in and for said county, duly authorized by the laws of Ohio to take the same, and that I am well acquainted with his handwriting and believe his signature thereto is genuine, and that the annexed instrument is executed and acknowledged according to the laws of the State of Ohio.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at Cleveland, this 21st day of November, A. D. 1873.

[OFFICIAL SEAL.] BENJAMIN S. COGSWELL, *Clerk.*

No. 79759. Filed for record April 6th, A. D. 1876, at 11 a. m.
JAMES STEWART, *Recorder.*

199 STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 6th day of ——, 1876, as document No. 79759, and recorded in book 575 of records, at page 357.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this twelfth (12) day of July, A. D. 1877.

[SEAL.] JAS. W. BROCKWAY, *Recorder.*

Ex. B.

Copy of Notes Referred to Above, Ex. B, & Embraced & Assumed in Deed.

$25,000. CHICAGO, *Nov.* 26, 1872.

On or before the first day of June, 1874, I promise to pay to the order of myself twenty-five thousand dollars, with 8 p'r ct. in'st from Dec. 1st next, interest payable semi-annually on the 1st days of Dec. & June in each year, at the banking-house of Tyler, Wrenn & Co., Chicago, value rec'd.

(Signed) T. S. DOBBINS.

200 $25,000. CHICAGO, *Nov.* 26, 1872.

On or before the first day of June, 1874, I promise to pay to the order of myself twenty-five thousand dollars, with 8 p'r ct. in-

terest from Dec. 1st next, interest payable semi-annually on the first days of Dec. & June in each year, at the banking-house of Tyler, Wrenn & Co., at Chicago, value rece'd.

(Signed) T. S. DOBBINS.

Each note endorsed on the back thereof T. S. Dobbins, Jno. C. Dunlevy, and in'st rec'd to June 1st, 1874.

Endorsed: Filed Nov. 1, 1878. W. H. Bradley, cl'k.

201 *Judgment.*

United States Circuit Court, Northern District of Illinois.

WILLIAM P. KERR
vs. } 14884.
MARY C. DOBBINS.

Assumpsit.

WEDNESDAY, *June 11th*, A. D. 1879.

Present: Hon. Henry W. Blodgett, district Judge.

Now comes the plaintiff, by his attorney, and it appearing to the court that the defendant had been duly served with process and has failed to plead, and she being now ruled to plead instanter, and she failing to plead or answer the rule, and the defendant being now three times solemnly called comes not, but makes default: It is thereupon considered by the court that her default be entered, and that the plaintiff have and recover of the defendant his damages, and after hearing the evidence on the part of the plaintiff the court finds that there is due to the plaintiff on the two certain promissory notes for the payment of money only upon which this suit is founded the sum of sixty-eight thousand one hundred and
202 sixteen dollars and sixty-seven cents. It is thereupon considered and adjudged by the court that the plaintiff do have and recover of defendant the said sum of sixty-eight thousand one hundred and sixteen dollars and sixty-seven cents, his damages so as aforesaid, found together with his costs and charges in this behalf expended, amounting to the sum of twenty-four dollars and twenty-seven cents, and that he have execution therefor.

203 *Order of Court.*

United States Circuit Court, Northern District of Illinois.

WILLIAM P. KERR
vs. } 14884.
MARY C. DOBBINS.

Assumpsit.

THURSDAY, *June 12th*, A. D. 1879.

Present; Hon. Henry W. Blodgett, district judge.

Now comes the defendant, by Henry S. Monroe, Esq., her attorney,

and moves the court to set aside and vacate the judgment and default herein and for leave to file a plea.

Ninth. Certified copy of stipulation in the case of William P. Kerr *vs.* Mary C. Dobbins aforesaid, recorded in the recorder's office of Cook county December 30th, 1881, provides for setting aside the aforesaid judgment and the dismissal of suit and the delivery to Mrs. Dobbins of the Dobbins notes, in consideration of the full payment thereof, and is in the words and figures following to wit:

204 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the Circuit Court.

WILLIAM P. KERR *vs.* MARY C. DOBBINS.

William P. Kerr, the plaintiff in the above-entitled suit, by John I. Bennett, his attorney, does hereby stipulate and agree that in consideration of the full payment of the two notes of $25,000 each (upon the assumption of the payment of which as con-tioned in the deed from said Kerr and wife to Daniel P. Rhodes and from said Rhodes and wife to said Mary C. Dobbins, conveying the undivided ¼ of S. fr. ½ of sec. 13, T. 38 N., R. 14 E., 3d P. M., for part of the purchase-money for which said notes were executed by Thomas S. Dobbins) the judgment rendered in the said suit shall be set aside, and the said suit dismissed, and the said notes delivered to said Mary C. Dobbins within twenty days from this date.

WM. P. KERR,
By JOHN I. BENNETT,
His Attorney.

No. 366,964. Recorded Dec. 30, 1881, at 11 a. m.
JAS. W. BROCKWAY, *Recorder.*

205 STATE OF ILLINOIS, } ss:
County of Cook, }

I, James W. Brockway, recorder of deeds in and for said county, in the State aforesaid, do hereby certify that the annexed is a true and correct copy of the record of a certain instrument filed in my office the 30th day of December, A. D. 1881, as document No. 366,964, and recorded in book 1104 of records at page 9.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Chicago, this eleventh (11th) day of February, A. D. 1882.

[SEAL.] JAS. W. BROCKWAY, *Recorder.*

206 Tenth. Record in the cause of William P. Kerr *vs.* South Park Commissioners in the circuit court of the United States for the northern district of Illinois, in chancery. By his bill Kerr counted on the legal title in him to S. E. fr. ¼ of sec. 13, T. 38 N., R. 14 E., the E. ½ of S. W. ¼ of same section, the E. part of the west ½

of S. W. ¼ of same section, not platted, and sundry lots in a subdivision of the east part of S. W. ¼ of same section. The decree in said cause was rendered Oct. 8th, 1878, and is as follows:

Decree.

Before Justice John M. Harlan. In Chancery.

WILLIAM P. KERR

vs.

JOHN M. WILSON, PAUL CORNELL, LEVERET B. SIDWAY, GEORGE W. Gage, Chauncey T. Bowen, The South Park Commissioners, Charles B. Phillips, and Charles H. Atkins.

This cause coming on to be heard upon the consolidated bill, answers, and replications and proofs, and having been argued by counsel, and the court being sufficiently advised in the premises,
207 it is ordered, adjudged, and decreed that the defendant, The South Park Commissioners, pay to the complainant, William P. Kerr, and his assignees the value of the premises on the twenty-seventh day of August, A. D. 1870, known and described as the south fractional half of section thirteen in township thirty-eight north of range fourteen east of the third principal meridian, except lots 9, 10, and 15 in Chas. B. Phillips' subdivision of 26 acres off the west side of the S. W. ¼ of said section thirteen, according to plat of same recorded in the recorder's office of Cook county in book 98 of maps, p. 9, and the east half of said southwest quarter of said section thirteen, together with interest thereon from the twenty-seventh day of August, A. D. 1870, at the rate of six per cent. per annum, upon the conveyance of said premises by the complainant, William P. Kerr and his assignees claiming under him, since the commencement of this suit by deed which shall release to the South Park Commissioners all interest of the said complainant and his assignees.

And it is further ordered that the value of said premises required to be paid be ascertained as follows: A jury shall be empanelled in this court on the law side thereof to hear the evidence sub-
208 mitted by both parties, and said jury shall determine by their verdict the value of the land hereinbefore described on the twenty-seventh day of August, A. D. 1870, the time when possession was taken by the South Park Commissioners, and the verdict shall be certified by the clerk to the chancery side of this court, and the amount so found shall be considered as the value of said premises on the day aforesaid, unless set aside or changed by the further order of this court.

And it is further ordered that the complainant, William P. Kerr, make a deed and procure deeds to be made by all persons claiming under him since the commencement of this suit, conveying to the South Park Commissioners the premises aforesaid when they shall pay the amount found to be due, with interest from the twenty-seventh day of August, A. D. 1870, at the rate of six per centum.

And the court denies any relief to the complainant as to the east half of the southwest quarter of section 13 aforesaid, and it is ordered that the bill of complaint be dismissed as to that part of the premises.

And it appearing to the court that the South Park Commissioners have commenced proceedings to condemn the undivided one-quarter of the west half of the southeast quarter of section twenty-four
209 in township thirty-eight north, of range fourteen east, of the third principal meridian, another of the tracts described in the bill, belonging to the complainant, it is ordered that all questions touching the same be reserved for the further order of the court. It is further ordered that the question of costs be postponed for the further consideration and order of the court.

And thereupon the said South Park Commissioners pray a separate appeal, which is thereupon allowed upon the giving of security, according to law, to be approved by the circuit judge.

Eleventh. Certified copy of the official proceedings of the South Park Commissioners of November 21st, 1879, at which meeting the record shows the following members present: James Morgan, John R. Walsh, John B. Sherman, Paul Cornell, Cornelius Price, and that the following resolution was passed, there being no other reference to the matters therein contained in the record of said meeting:

"Resolved, That the president of this board is hereby authorized to make such settlement and adjustment of the litigation re-
210 garding the south half of fractional section 13, town. 38, 14, and such purchase of the title thereto as, in his judgment, may be advisable, and for that purpose to draw from the treasurer of this commission a sum not exceeding the sum of ninety thousand dollars before reporting the same to this board, and that the auditor is hereby instructed to sign the necessary warrants for said sum of money or so much thereof as called for."

Twelfth. Receipt of James Morgan, dated April 8, 1880, for sundry papers, which receipt is in the words and figures following, to wit: (See deposition of Morgan.)

Thirteenth. The notes and papers referred to in said receipt, eight in number, — as follows, to wit:

211 *Promissory Note.*

a JULY 16.

$30,325.00. CHICAGO, ILL., *May* 14, 1879.

Sixty days after date I promise to pay the National Bank of Illinois, at Chicago, or order, thirty thousand three hundred & twenty-five dollars, at the banking-house of said bank, value received, with interest at the rate of ten per cent. per annum after maturity, having deposited with said bank as collateral security a certain promisory note for the sum of twenty-five thousand $\frac{00}{100}$ dollars, dated Chicago, November 26, 1872, made by T. S. Dobbins, payable to his own order on or before June 1, 1874, at banking-house of Tyler, Wrenn & Co., with 8 per ct. interest, & by s'd Dobbins indorsed in blank, with interest endorsed paid to June 1, '74; s'd note secured by trust deed on undiv. $\frac{1}{4}$ of S. $\frac{1}{2}$ of sec. 13, T. 38, R. 14, made by Dan. P. Rhodes to Dan. A. Jones, Jno. B. Drake, alternate trustee, which said security, or any part thereof, I hereby give the said bank, or its president or cashier, authority to sell on

the maturity of this note or at any time thereafter or before,
212 in the event of the said security depreciating in value, at public or private sale, at their discretion, without advertising the same or giving me any notice, and to apply so much of the proceeds thereof to the payment of this note as may be necessary to pay the same, with all interest due thereon, and also to the payment of all expenses attending the sale of said collateral security; and in case the proceeds of the sale of said collateral security shall not cover the principal, interest, and expenses, I promise to pay the deficiency forthwith after such sale, with interest at ten per cent. per annum. And it is hereby agreed and understood that if recourse is had to said collateral, any excess of collateral upon this note shall be applicable to any other note or claim held by said bank against me, and in case of any exchange of or addition to the collateral above named the provisions of this note shall extend to such new or additional collateral."

(Signed) WILSON K. NIXON.

Endorsed: 19906. Without recourse to us. "Signed." The National Bank of Illinois, by H. H. Nash, cashier.

213 *Promissory Note.*

EXHIBIT B.

$25,000 No. 374 WABASH AVENUE,
CHICAGO, *Nov.* 26, 1872.

On or before the first day of June, 1874, I promise to pay to the order of myself twenty-five thousand dollars, with 8 per cent. interest from Dec. 1st next, interest payable semi-annually on the first days of Dec. & June in each year, at the banking-house of Tyler, Wrenn & Co., in Chicago, value rec'd.

(Signed) T. S. DOBBINS.

Endorsed: 1. Int. rec'd to Dec'r 1st, 1872. 2. Int. p'd to June 1, '73. Rec'd five hundred dollars int. Jan. 10, '74. 3. Rec'd five hundred dollars int., Feb'y 10, '74. (Signed) T. S. Dobbins. (Signed) Jno. C. Dunlevy. 4. Rec'd int. to June, 1874.

214 *Promissory Note.*

d. JULY 17.

$30,225.00. CHICAGO, ILL., *May 15th*, 1879.

Sixty days after date I promise to pay the National Bank of Illinois, at Chicago, or order, thirty thousand two hundred and twenty-five dollars, at the banking-house of said bank, value received, with interest at the rate of ten per cent. per annum after maturity, having deposited with said bank as collateral security one note of $25,000.00, dated Chicago, Nov. 26, 1872, made by T. S. Dobbins, payable to his own order on or before June 1, 1874, at the banking-house [of] Tyler, Wrenn & Co., Chicago, with 8 % interest, and by said Dobbins endorsed in blank, with interest endorsed

paid to June, 1874, said notes being secured by trust deed on the undivided quarter of S. ½ of sec. 13, T. 38, R. 14, made by Daniel P. Rhodes to Daniel A. Jones, John B. Drake, alternate trustee, which said security or any part thereof I hereby give the said bank, or its president or cashier, authority to sell on the maturity of this note, or at any time thereafter or before, in the event of said security
215 depreciating in value, at public or private sale, at their discretion, without advertising the same or giving me any notice, and to apply so much of the proceeds thereof to the payment of this note as may be necessary to pay the same, with all interest due thereon; and also to the payment of all expenses attending the sale of said collateral security; and in case the proceeds of the sale of said collateral security shall not cover the principal, interest, and expenses, I promise to pay the deficiency forthwith after such sale, with interest at ten per cent. per annum.

And it is hereby agreed and understood that if recourse is had to said collateral, any excess of collateral upon this note shall be applicable to any other note or claim held by said bank against me, and in case of any exchange of or addition to the collateral above named the provisions of this note shall extend to such new or additional collateral.

(Signed) LLEWELLYN CURRY.

Endorsed: 19914. Without recourse to us. (Signed) The National Bank of Illinois, by H. H. Nash, cashier.

216 EXHIBIT E.

Promissory Note.

$25,000. CHICAGO, *Nov.* 26, 1872.

On or before the first day of June, 1874, I promise to pay to the order of myself twenty-five thousand dollars, with 8 pr. ct. interest from Dec. 1st next, interest payable semi-annually on the 1st days of Dec. & June in each year, at the banking-house of Taylor, Wrenn & Co., in Chicago, value rec'd.

(Signed) T. S. DOBBINS.

Endorsed: Int. rec'd to Dec'r 1st, 1872. Int. p'd to June 1, '73. Rec'd five hundred dollars' int. Jan. 10, '74. Rec'd five hundred dollars int. Feb. 10, '74. (Signed) T. S. Dobbins. (Signed) Jno. C. Dunlevy. Rec'd int. to June, 1874.

217 EXHIBIT F.

Promissory Note & Power of Attorney.

$21,000.00. CHICAGO, ILL., *November 14th*, 1879.

On demand, after date, I promise to pay the National Bank of Illinois, at Chicago, or order, twenty-one thousand dollars, at the banking-house of said bank, value received, with interest at the rate of eight per cent. per annum after demand.

(Signed) JOHN I. BENNETT.

Know all men by these presents that whereas I, the subscriber, am justly indebted to the National Bank of Illinois, at Chicago, upon a certain promissory note, bearing even date herewith, for the sum of twenty-one thousand dollars, with interest at the rate of eight per cent. per annum after demand, and due on demand after date:

Now, therefore, in consideration of the premises, I do hereby make, constitute, and appoint W. C. Grant, or any attorney of any court of record, to be my true and lawful attorney, irrevocable, for me and in my name, place, and stead to appear in any court of record, in term time or in vacation, in any of the States or Territories
218 of the United States, at any time after the date hereof, to waive the service of process and confess a judgment in favor of said The National Bank of Illinois, at Chicago, or their assigns or assignees, upon the said note, for the amount then due on said note, and interest thereon to the day of the entry of said judgment, together with the costs and usual attorney's fees; and also to file a *cognovit* for the amount thereof, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, and to release all errors that may intervene in the entering up of said judgment or issuing the execution thereon; and also to waive all benefit or advantage to which — may be entitled by virtue of any homestead or other exemption law now or hereafter in force in this or any other State or Territory where judgment may be entered by virtue hereof, hereby ratifying and confirming all that my said attorney may do by virtue thereof.

Witness my hand and seal this 14th day of November, A. D. 1879.

(Signed) JOHN I. BENNETT. [SEAL.]

In presence of—

—— ——.

29645. Endorsed: Without recourse to us. (Signed) The National Bank of Illinois, by H. H. Nash, cashier.

219 EXHIBIT G.

Promissory Note.

$7,200.00. CHICAGO, *February 26th*, 1880.

On demand, after date, I promise to pay to my own order seventy-two hundred dollars at National Bank of Illinois, value received. No.—. Due.

(Signed) LLEWELLYN CURRY.

Endorsed: (Signed) Llewellyn Curry.

220 Know all men by these presents that I, Fred. A. Ingalls, of the city of Chicago, Illinois, do hold the title by quit-claim deed, dated November 12, 1879, from Mary C. Dobbins and Thomas S. Dobbins, her husband, to the south half of fractional section thirteen

(13), township thirty-eight north, range fourteen (14) east, of the 3 P. M., in trust to secure the payment to the National Bank of Illinois a note of John I. Bennett to said bank for ($21,000.00) twenty-one thousand dollars, due on demand, to bear eight per cent. per annum interest after demand; and whatever interest is conveyed to me by said deed is held for the security of said sum specified in said note, in trust for said bank as the first security for repayment of said money on said premises.

Chicago, Nov. 14th, 1879.

(Signed) FRED. A. INGALLS. [SEAL.]

Witness:

(Signed) JERE'H LEAMING.

I also hold in trust the title derived through the following-
221 described deeds, viz: Deed from Robert E. Jenkins, receiver of estate of Thomas S. Dobbins, in case [wherein] Morris R. Hunt is complainant and said Dobbins *et al.* are defendants, in U. S. circuit court for northern dist. of Illinois; Robert E. Jenkins, assignee of Thos. S. Dobbins, in bankruptcy, to Frank I. Bennett, and from Frank I. Bennett, all covering the interest of said Dobbins in S. ½ frac. sec. 13, T. 38 N., R. 14 E., 3rd P. M., and it is held, 1st, to secure the payment of the within-named sum of twenty-one thousand dollars; 2nd, to secure to the holder thereof the payment of $7,200.00, evidenced by note of Llewellyn Curry, payable to the order of himself and by him endorsed, dated February 26, 1880, payable on demand.

Witness my hand this 26th day of February, 1880.

(Signed) FRED. A. INGALLS.

222 Fourteenth. Copies of receipts given for warrant No. 4782 for $82,800, and warrant No. 5035 for $7,200 as follows, to wit: (See deposition of Morgan.)

222 Fifteenth. The original warrants, Numbers 4782 and 5035, as follows, to wit:

No. 4782.

Office of the South Park Commissioners, 67 Dearborn Street.

$82.800. CHICAGO, *Nov. 22d*, 1879.

Pay National Bank of Illinois, or order, eighty-two thousand eight hundred dollars, for acc. of land.

H. W. HARMON, *Secretary.*

To George Schneider, treasurer South Park Commissioners.

[National Bank of Illinois. Paid.]

Countersigned and registered.

C. PRICE, *Auditor.*

Endorsed: Pay the within to order of payee and charge same to my account. Geo. Schneider, treasurer South Park Commission.

223 No. 5035.

Office of the South Park Commissioners, 67 Dearborn Street.

$7,200.00. CHICAGO, 2–26, 1880.

Pay James Morgan, pres., as per res'l. Nov. 21, '79, or order, seventy-two hundred dollars, for acct. securities on land S. ½ fr'l Sec. 3, T. 38, R. 14.

H. W. HARMON, *Secretary.*

To George Schneider, treasurer South Park Commissioners.

[National Bank of Illinois. Paid.]

Countersigned and registered.

C. PRICE, *Auditor.*

Endorsed: National Bank of Illinois, pay the within to order of payee and charge same to my account. Geo. Schneider, treasurer South Park Commission. Pay to order of J. C. Dunlevy (deeds from assignee and receiver, R. E. Jenkins). James Morgan, pres't. Jno. C. Dunlevy.

224 Sixteenth. Resolution adopted by the South Park Commissioners May 1st, 1877, as follows, to wit:

"Resolved, That Francis H. Kales and Richard S. Thompson be, and are hereby, declared to be the regular attorneys for the South Park Commission, with monthly retainer of $100 each, until otherwise ordered by the board."

On behalf of the complainant was then read the depositions of H. W. Harmon, secretary of the South Park Commission; S. W. Burnham, J. F. Foster, W. B. Wirt, H. S. Monroe, Thomas S. Dobbins, H. W. Harmon (recalled), John R. Walsh (taken originally for def't Morgan), R. E. Jenkins, and Cornelius Price, as follows:

225 Complainant also read in evidence the depositions of John P. Bennett, Frank P. Bennett, and William H. Bradley, taken originally on the cross-bill of John P. Bennett, which depositions are as follows, to wit:

On the part of defendant Kerr, was read in evidence the depositions of R. S. Thompson, John B. Sherman, Paul Cornell, James Morgan, and John C. Dunlevy, as follows, to wit:

226 In the Circuit Court of the United States for the Northern District of Illinois.

THE SOUTH PARK COMMISSIONERS, Complainant,

vs.

JAMES MORGAN and Others, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 17th day of January, A. D. 1882.

Present: Mr. W. Fuller, Esq., for complainant; J. Leaming, Esq., for defendant Morgan.

RICHARD S. THOMPSON, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. LEAMING, and deposes and says as follows:

Q. State your name, age, residence, and occupation.

A. My name is Richard S. Thompson; age, 44 years; my residence is Hyde Park; my occupation is that of a lawyer; State of Illinois.

Q. Do you know the parties to this suit; and, if so, how long have you known them?

A. I believe I know all the parties to this suit; I have known all the South Park Commissioners since their organization; I have known Mr. Morgan for ten years—about.

Q. In 1879 or thereabouts did you have anything to do in relation to any attempted settlement of the matter known as the
227 land controversy, sec. 13, 38, 14, in the east part of the South Park?

A. I did.

Q. And which is alluded to in the bill filed here and set up?

A. Yes.

Q. Now you may state what you did between the South Park Commissioners and John C. Dunlevy—Dunlevy acting for Kerr and you acting for the South Park Commissioners; what occurred?

A. I will say, to commence with, there was a litigation pending in the United States circuit court for the northern district of Illinois, in reference to the south half or fractional half of section 13, township 38 north, range 14, the property you have referred to, and with that litigation I had no connection whatever; I never had acted for the South Park Commissioners with reference to this property in any manner as its attorney; I had never been connected with the litigation and had nothing to do with that matter; it was left to the other attorneys. In 1878, about October 8, there was a decree rendered in the United States circuit court in that suit, and, as I understand, an appeal begun——

Q. You have not stated in what suit.

A. In the suit of Kerr *vs.* South Park Commissioners *et al.*, and, as I understand, an appeal was taken by the South Park Commissioners to the Supreme Court of the United States, and also, afterwards, an appeal was taken on behalf of Kerr, I am informed; I know nothing of the fact other than by information; after that decree had been rendered in the United States circuit court Paul Cornell, then a South Park Commissioner, also Mr. James Morgan, a South Park Commissioner, spoke to me at different times, and
228 asked me whether I would not undertake to effect a settlement or compromise of that litigation with the representatives of Mr. Kerr, with a view of obtaining for the South Park Commissioners a title to the premises above mentioned, namely, the south half-section 13; I stated that I would undertake the settlement, at least I would see what could be done; if anything worthy of consideration could be effected I would advise, but that I would take that course acting as an agent and not in the capacity of attorney.

I saw John C. Dunlevy, who represented himself as attorney-in-fact of Mr. Kerr, and we had constant interviews from that time up to about April, the first of April, 1879; the matter then had taken such shape that it seemed possible that a compromise might be made, and I then had interviews with Mr. Walch, one of the South Park Commissioners, and with Mr. Sherman—John B. Sherman—another member of the South Park Commission, and Mr. Morgan, with reference to the matter. Constant interviews continued until some time in April, 1879, when a meeting was called at Mr. Morgan's office for Mr. James Morgan, John B. Sherman, and John R. Walch, all three Commissioners of the South Park, and all three being present with myself to consider the question of this compromise; at that time the basis of a compromise had been reduced to writing, which was essentially and substantially the same as that attached to the answer of James Morgan in this case, marked Exhibit A, with the exception that the maximum price per acre was not determined; at that meeting Mr. Walch, Mr. Sherman, and Mr. Morgan discussed that contract from first to last,
229 each clause of it thoroughly, and such changes as they desired to have made, and a memorandum of them was then made at that time, and I was instructed by those gentlemen to make the changes suggested, and then, if Mr. Kerr would reduce the maximum to $2,000 per acre, that the contract might be made. I then had further interviews with John C. Dunlevy, and finally it resulted in his agreeing to the contract as modified by the suggestions of these three gentlemen, and agreed to the $2,000 as the limit, as he stated, with a view to an immediate settlement, and that he might immediately be placed in funds for purposes that he desired. A fair copy of the contract was then written out, which was precisely the same as that attached to the answer of James Morgan, marked Exhibit A, with the exception that the date had not been added to it, the date of the contract, and the signatures had not been put to it; that contract I delivered to John R. Walch at his office, and asked him to look it over again thoroughly, and see if he had any further suggestions to make; he took that contract; the next day or the second day after, I wouldn't be sure which—this was in May, the early part of May—I went to his office and he handed me back the contract, saying that it was all right and to go ahead and execute it. I then told Mr. Walch that I did not desire to sign that contract or place my name to that contract unless it was a matter that was being done in such good faith that I might rely upon its accomplishment, and I did not desire to place my name upon a contract that
230 would not meet with entire approval. He told me to go on and sign it. I will say, however, that I had previously shown that same contract to James Morgan, at his house; he had read it over and examined it, and stated that it was correct, and to execute it. At the time I received the contract back from Mr. Walch I told him I would take it down to Mr. Sherman before executing it; but he told me it was not necessary; he knew Mr. Sherman's views in the matter; the contract was agreed upon while he was present, and there was no necessity of my seeing him; but I

did go to Mr. Sherman's house with the contract, and proposed to read it to him, and he said it was not necessary to read it to him; asked me what changes had been made in it since the consultation in Mr. Morgan's office; I indicated the changes that had been made, read them to him, and he told me to execute the contract. In that agreement, and in that understanding made with Mr. Dunlevy, as the attorney-in-fact of Mr. Kerr, it became necessary for him, as he represented, to have immediate funds, and it had been agreed between Messrs. Walch, Sherman, and Morgan, and Mr. Dunlevy that he was to have the amount advanced that should be shown to be due upon what were known as the Dobbins notes, that are referred to in the bill—two notes originally for $25,000 each, with interest due on them at that time amounting, principal and interest, *amounting* to about $70,000. Mr. Morgan, when the matter of raising the funds finally came to be discussed, insisted that no money should be taken from the commission without the matter being first passed upon by
231 the board and the other commissioners agreeing with him, so that it became necessary to raise this money in some other way in order to meet the agreement which Mr. Dunlevy insisted upon; that before this contract should be openly approved in the board and be made public he should have an opportunity to purchase in such outstanding titles as he could negotiate for, and that for that purpose it was not desired that the contract should be immediately approved in the board, and that no action should be taken in the board to give notice to persons that were making claims upon the title that the contract had been made, the agreement being that he was to have the amount of money shown to be due upon the Dobbin's notes, and $50,000, as the first payment under the contract, making in all about $120,000. Under that state of facts Mr. Walch went with myself to the National Bank of Illinois, and made arrangements with Mr. Snyder as president, and, I think, Mr. Bradley, as some officer of the bank; I don't remember what his position was; I think director, and one of the managers of the bank; Mr. Nash, secretary of the bank, was present part of the time. He made the arrangement that the bank was to advance Mr. Kerr or Mr. Dunlevy, as Mr. Kerr's attorney-in-fact, money upon these two notes of Dobbins, secured by the trust deed of Rhodes upon the undivided (¼) one-fourth of the said south half of section 13. Mr. Walch at that time represented to the bank officers that there was an agreement about to be consummated, the consummation of which was delayed in order to facilitate the
232 purchase of outstanding titles; that it was a matter that would be beneficial to the park, and that it was a mere temporary matter for the purpose of getting in these outstanding titles; until that was done they didn't desire the thing to be known, and that if they would advance the money upon these notes to Mr. Dunlevy, that as soon as the board, the park board, adopted a compromise that they would take up the advance. The bank officers agreed to do it. He stated that it would be necessary for them to advance the money upon the Dobbins notes, they being past due, or that it would be necessary in order to make the transactions that some notes should be made and the Dobbins notes placed as collate-

ral. That was the arrangement that was finally effected. Now, in conformity with that understanding, the two notes that are mentioned in the bill, one dated May 14, 1879, made by Wilson K. Nixon, for $30,325, due at 60 days to the National Bank of Illinois, and one dated, I think, about the 15th of May, 1879, made by Llewellyn Curry, for $30,225, payable to the National Bank of Illinois, were made, and the Dobbins notes, referred to in the bill, for $25,000 each, secured by the trust deed made by one Rhodes, were placed as collateral to the Nixon and Curry notes, and the bank made the advance. Immediately negotiations were instituted for the purpose of clearing up what was known as the Dobbins title, or Mrs. Dobbins' title. I will state that this contract that I have mentioned with Mr. Kerr and the South Park was executed on the 14th day of May, 1879, and signed, as set forth in Exhibit A,
233 Morgan's answer to William P. Kerr, by John C. Dunlevy, his attorney-in-fact, and the South Park Commissioners, by Richard S. Thompson, its agent.

The matter ran along until about the 12th of November, various negotiations having been attempted and failed for the procuring of what was known as the Dobbins title under the terms of that contract. About that time an agreement was reached for the title of Mrs. Dobbins—that is, for the equity of Mrs. Dobbins in the property, and a deed was executed, dated, I think, the 12th day of November, 1879, and acknowledged on the same day, and on the 14th of November, 1879, it became necessary to pay the money that had been agreed to be paid for that deed, together with certain commissions to parties who had perfected the arrangement. The amount of money, it was claimed, necessary to be paid was $21,000. Mr. Walch again went to the bank and arranged for that $21,000 *for that $21,000* which the bank did advance to John I. Bennett, who was acting in the matter of attempting to make this purchase of the outstanding title. Bennett gave his individual note to the National Bank of Illinois for $21,000, dated November 14, 1879, in my presence, saying to the bank officer, and it having been previously agreed, that as soon as we got this title by quit-claim deed from Mrs. Dobbins to Fred. A. Ingals, who was to hold the title in trust, that Mr. Ingals should make a declaration of trust to secure that note of Bennett. The $21,000 was paid by the bank to Bennett, and he went out leaving me, and afterwards brought back
234 the deed to Fred. A. Ingals. Fred. A. Ingals then made a declaration of trust, declaring substantially that he held the title. I think that is set up in the bill or answer, dated on the 14th of February, 1879, in which Ingals declares that he holds the title derived by the quit-claim deed from Mary C. or Thomas S. Dobbins, dated November 12, 1879, of the south fractional half of section 13, 38, 14, in trust to secure the John I. Bennett note of $21,000. That declaration of trust was given to the bank as security for that note. At the time of the transaction Mr. Walch represented to the bank officers that the matter was about closed, so far as getting in this outstanding title was concerned, and that the contract would be presented to the South Park Commissioners and they would very soon

take up this indebtedness. My recollection is that he told them it should be done at the next meeting of the board, the next regular meeting of the board; this was in my presence. This contract, made between Dunlevy and myself as agent of the South Park Commissioners, was dated, as I have said, on the 14th day of May. The matter having held along as long as it did, and there being a requirement in the contract specifying certain things should be done within thirty days of the date of the contract in behalf, as I remember it, of the South Park Commissioners, my recollection is that I called the attention of some of the commissioners to it, and asked Judge Dunlevy, as attorney-in-fact, to change the date of the instrument so the thirty days would commence to run from about the time of the meeting, instead of in May, and the
235 date of the contract was changed from May, 14, 1879, to November, 14, 1879, so that the thirty days' clause in the contract might be complied with after it had been presented to the commissioners in open board. On the 21st of November, 1879, there was a meeting of the South Park Commissioners in regular session, and this contract was laid before the full board. The entire membership of the South Park Commissioners were present—John R. Walch, John B. Sherman, James Morgan, Paul Cornell, and Cornelius Price. The contract was somewhat discussed, Mr. Cornell stating that he was in favor of it, and the only objection that was made was made originally by Mr. Price, who said that he had not known anything about the contract; it was a new thing to him, and that while he had known for a few days an effort was being made to settle or compromise, that he knew nothing about the terms of the contract; it never had been shown him, and he had never been consulted in regard to the matter, and he asked that the matter be laid over until the next meeting of the board, so that he might have an opportunity to examine it more, at least. Mr. Walch said there was no objection to that other than the fact there were securities at the National Bank of Illinois which it had been agreed should be taken out, and it was understood that action should be taken by the commissioners at that meeting to take up the securities and relieve the bank from carrying them longer. Mr. Walch knew precisely what the securities were, and he requested me
236 to draw up a resolution which would enable sufficient funds to be taken from the commission to take up those securities from the bank, and to meet any further expenses in clearing up the Dobbins title, and I drew the resolution which was adopted at that meeting, as shown by the bill or the answer. The resolution was adopted by the board on the 27 of November, 1879, and the matter was then, by general consent, laid over for Mr. Price to make a personal inspection of the contract, and satisfy himself with reference thereto. My recollection is, I went to the bank with Mr. Morgan about November 29, on which date a warrant was drawn under the resolution which was adopted on the 21st for the sum of $82,800, which warrant was made on its face payable to the National Bank of Illinois. Mr. Morgan delivered that to the bank; my impression is I was with him at the time. I was with him, or else he showed

me his papers afterwards. I know the warrant was so drawn, for I have seen it. Mr. Morgan delivered that warrant to the National Bank of Illinois, and took up the three notes of Nixon, Curry, and Bennett, together with their collaterals and the declaration of trust. I had heard, and, in fact, the papers in connection with the title to this property were such as to lead me to believe, there might be some question in reference to whether or not Thomas S. Dobbins himself might have an interest in the premises, which it would be necessary to extinguish, the facts, as I have heard them, being that he had used some funds in the purchase of the property at the time that the conveyance was made to Mrs. Dobbins, or the conveyance made to Rhodes, and the fact being apparent
237 that Thomas S. Dobbins had given his individual note for the payment of the deferred purchase-money, and, fearing there might be some complication in the matter, I told John C. Dunlevy that he must get the title from the assignee in bankruptcy of Thomas S. Dobbins, Robert E. Jenkins, and also get any title he might have in the matter in which he had been appointed receiver, appointed, I think, by the United States circuit court. I desired those two titles taken up; no matter whether they were worth much or little, I desired they should be procured. A deed dated February 17, 1880, made by Robert E. Jenkins, receiver of the estate and effects of Thomas S. Dobbins, under a proceeding in the United States circuit court for the northern district of Illinois, wherein M. R. Hunt is complainant and Thomas S. Dobbins and others *is* defendant, was made to Fred. A. Ingals, of Chicago, conveying all interest of said Dobbins in the south half of fractional section 13, 38, 14, Cook county, Illinois, which deed was recorded on the 20th of March, 1880, in the recorder's office of Cook county, and on the 25th of February, 1880, a deed of Robert E. Jenkins, assignee in bankruptcy of the estate of Thomas S. Dobbins, was made to Frank I. Bennett, which deed was acknowledged on the 25th of February, 1880, and recorded March 30th, 1880, conveying all interest of Dobbins in an undivided one-fourth interest in the south fractional half of said section 13. On the 25th of February, 1880, a deed was made by Frank I. Bennett, quit-claiming the same premises conveyed to him by Jenkins, assignee in bankruptcy, to Fred. A. Ingals,
238 which deed is recorded on the 25th of March, 1880; and on the 26th of February, 1880, Fred. A. Ingals made a declaration of trust substantially that he held the title conveyed to him under the deeds of Jenkins and Bennett, first, to secure the Bennett note above referred to of $21,000, and, second, to secure the note of Curry for $7,200. This note of Curry was a note which was made for the purpose of raising an additional amount and completing the paying over of the $9,000, which was for the balance of the $90,000, being $7,200. The South Park Commissioners in the resolution referred to provided that $9,000 should be expended by the president of the board, and this $7,200 was the balance of the $90,000, $82,800 having already been paid to the National Bank of Illinois, as I before stated. This note was given to represent that $7,200, and the declaration of trust was given so that it could be secured. The

commissioners, so far as my knowledge goes of their action, never did formally adopt the contract that I have referred to as attemped to be made between Mr. Kerr and the commissioners, and it was the understanding, distinctly made by Mr. Dunlevy, as attorney-in-fact of Mr. Kerr, that in this transaction if anything should occur by which that contract should not be formally adopted by the commission, that then and in that event whatever sums were advanced by the commissioners in any of these transactions should stand as a payment to Mr. Kerr on the title that he might have in the south half of said fractional section 13; said payments should bear interest at the rate of 6 per cent. from the time they were made by the said commissioners. It was the agreement made at the time the Dobbins notes
239 were delivered as collateral to the Curry and Nixon note; that they should not be foreclosed, but that they were delivered in view of the terms mentioned in the contract to which I have alluded, as attached to the answer of Morgan, marked Exhibit A. I will state that I think some time in March, 1880, I ceased to have anything further to do with this matter. I will further state that the said Park Commissioners never paid me any compensation whatever for the work that I did in regard to this compromise, or attempted compromise, nor did I ever demand any pay from them, nor have I any demand upon them for any pay on account of the service that I performed in this matter. I acted upon the distinct understanding that I was acting as an agent and not as an attorney. In June, 1881, or about the first of July, I received the following letter from Joseph F. Bonfield, then attorney of the South Park Board, which I desire to attach and have made a part of my deposition, to which letter I sent Mr. Bonfield a reply, a letter-press copy of which I also attach hereto.

Q. Who was the attorney for the board of South Park Commissioners in the litigation between the commissioners and Kerr during the period of which you have spoken?

A. Francis H. Kales was the regular attorney of the commission in charge, as I understand it, of this case, and I believe Mr. M. W. Fuller and Lyman Trumbull are employed by the commission in the case to assist Mr. Kales.

Q. Mr. Kales was likewise the regularly retained attorney and counsel of the board at that time?

A. Yes, sir.

240 Q. Did you consult with Mr. Kales in regard to the contract of which you have spoken between Kerr and the Board of South Park Cammissioners?

A. I did. I will state one thing further: at the time of the adoption of the resolution by the South Park Commissioners for the payment of this money I had with me before the board at that time the deeds made by Mr. Kerr referred to in the contract attached to Morgan's answer as Exhibit A. The deeds run from Kerr to the South Park Commissioners, which deeds had been left by Dunlevy, as attorney-in-fact of Mr. Kerr, with Jeremiah Leaming, in escrow, as provided in the contract, together with a power of attorney from

Kerr to J. C. Dunlevy, authorizing him to act as his attorney-in-fact in the matter, but the deeds were signed and acknowledged by William P. Kerr and his wife. I will say that prior to the execution of those deeds the form of the deeds was submitted to Mr. Kales, and the deeds were drawn in conformity with the form given by him to me for that purpose. I will state that I have compared the contract attached to Morgan's answer, marked Exhibit A, with the original contract, and it is the same, with the exception of a few slight errors in copying, such as leaving out the word "the" in one case and "a" in another. I have indicated the corrections in lead pencil in the margin.

Adjourned to 2 o'clock p. m. Thursday, January 20, 1882.

241 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS, Complainant,

vs.

JAMES MORGAN *et als.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Thursday, the 19th day of January, A. D. 1882.

Present: M. W. Fuller, for complainant; J. Leaming, for defendant-.

R. S. THOMPSON, a witness on behalf of the defendant-, being first duly sworn, was further examined in chief by Mr. Leaming, and deposes and says:

JANUARY 19, 1882.

Mr. LEAMING:

Q. You say you answered Mr. Bonfield's communication, Exhibit A to your deposition, by a letter, shown as Exhibit B. Did you ever receive any further communication from Mr. Bonfield, either verbal or in writing, in respect to the subject-matter of that correspondence?

A. Not from Mr. Bonfield.

Q. Did you have any communication with John R. Walsh subsequent to the time of his election as president of the board and before the filing of the bill in this case in respect to this Kerr and South Park matter? If so, state when it was and how it was.

A. After his election as president of the Board of South Park Commissioners and prior to the filing of this bill, I don't remember the exact date, I had a conversation with Mr. Walch in respect to
242 this matter, and my recollection is it was after some publications had been made in the newspapers about it. I then volunteered to Mr. Walch the proposition that at any time when the board or any committee of the board desired any information in regard to this matter I would come before them with the paper that they had in their possession and make a full and complete explanation to them of precisely how the matter stood, as I understood the case. He expressed his satisfaction with that and said that he would

report it to them. He said that he would call Mr. Bonfield's attention to it and try and have the matter accomplished; that is, have me come before them and make such explanation as we desired, but I never heard anything from him afterwards about it, nor from any one else, requesting me to do this.

Q. Did Commissioner Price have any knowledge of the two warrants, aggregating $90,000, other than what he would have gained from the resolution of November 21st, 1879, that you know of; if so, what knowledge?

A. He did. Mr. Price at that time was not only one of the commissioners, but also auditor of the board, and it was necessary in drawing warrants upon the treasury of the commission that he should countersign those warrants, and Mr. Price did countersign both of these warrants, one for $82,800 and the other for $7,200, aggregating $90,000.

Q. What knowledge did Commissioner Walch have of this money represented by the warrants, and as to how it was obtained?

A. After the resolution was passed, on November 21, 1879,
243 directing the $9,000 to be appropriated, I don't remember of any conversation with Mr. Walch in reference to the fact of the warrant for $82,800. He, of course, knew what it was for, because he had made the arrangement with the bank for its payment. As to the warrant for $7,200, at the time the warrant was drawn—that is, on the day it was drawn, and prior to its being signed by Commissioner Price—Commissioner Price before he countersigned it said he would like Mr. Walch's attention called to it, and would like to know whether he approved of the warrant being drawn. I went to Mr. Walch, and saw him with reference to the warrant for $7,200, explaining to him the purpose for which it was to be used. He approved of it, and sent word through me to Mr. Price, requesting that the warrant should be given, and thereupon Mr. Price countersigned the warrant.

Cross-examination by Mr. FULLER:

Q. Who has the deeds that you have produced upon your examination-in-chief?

A. I have them.

Q. What was the understanding in reference to their delivery to the South Park Commissioners, if any?

A. The understanding was this: that Mr. Kerr should be allowed to go on and get up these outstanding titles. The titles were gotten up for Mr. Kerr, and placed in Mr. Ingall's —, to be held by him, first, to secure the money that was advanced by the commission, and, second, for Mr. Kerr to enable him to carry out this contract, provided it was consummated by the park, otherwise the title would stand simply as an additional security for the money advanced by the park, but the title would be for Mr. Kerr, the purchase of
244 that title being on contemplation in this agreement that is attached to Mr. Morgan's answer as Exhibit A.

Q. If the agreement failed to be carried out, do I understand that the South Park Commission would not get the Dobbins' title for the $90,000?

A. There was no purchase by the park, nor intended purchase by the park, of any title other than simply in contemplation of that agreement. The title as purchased of Mrs. Dobbins, and the additional title purchased of the assignee and receiver of Thomas S. Dobbins, were purchased of —on account of Mr. Kerr, and not by the park. It was purchased by him, and by him to be delivered finally under this contract, provided the contract went through.

Q. But in case of a finding in the case of Kerr *vs.* South Park the $90,000, I understand you to say, was in any event to be deducted?

A. That was to be deducted in any event. That was the manner in which that $90,000 was invested by the commission as a payment of so much money upon that purchase—upon the entire purchase, not only of the Dobbins title, but Kerr's title. It stands as a payment on account of the purchase of the title and the property that was then or should thereafter be in Kerr.

Q. I notice the agreement speaks of 220 acres assumed to be the quantity of the real estate on the 27th of August, 1870; what was the question in regard to the area of the land?

A. The South Park Commissioners, as it was admitted in the negotiations by both sides, took possession of that property on the 27th of August, 1870, and that was the date fixed in the de-
245 cree rendered by Justice Harlan in the case of Kerr *vs.* South Park Commissioners as the date on which the valuation should be fixed, and in this agreement that date so fixed by the decree was followed. The only question that remained then was, What was the condition of the property at the time the Park Commissioners took possession of it? and after examining a number of witnesses with reference to the area, and consulting with the engineer of the park at that time, it appeared at that period there was at least 220 acres of land, considerable portion of it, since the Park Commission took possession of it, washed away. I will state that Judge Dunlevy, acting for Mr. Kerr, claimed there was more land there on the 27th of August, 1870, than the 220 acres, but that was finally fixed as the amount at that time, and he claimed payment for the land as it was when they took possession, in view of the decree of the United States court.

Q. The proceedings in the United States court, pleadings, &c., my recollection is, assumed there was 196 acres, which is my reason for putting the question.

A. I never read the proceedings in the United States court, but I will say that I think the abstract showed that the Government survey, at the time it was made, gave this amount as 196 acres, more or less, and that 196 acres has been the expression that has been used on a great many occasions.

Q. Who was Mr. Ingals?

A. Mr. Ingals is a gentleman who was formerly a clerk in the office of Leaming & Thompson.

Q. Was he at this time?

A. He was not at that time; he had left our office. The
246 reason the title was placed in him was because, knowing him and having confidence in the man, his name was suggested by myself as the man to take the title.

Q. Who was Mr. Curry, who gave the note, and why did he give the note under the circumstances?

A. I am not acquainted with Mr. Curry, that I know of. Mr. Curry gave his note under these circumstances, as I have already stated: The first advance of money made by the bank through the arrangement with Mr. Walch was made as I have already stated. The two notes of Thomas S. Dobbins, for $25,000 each and accumulated interest, amounting at that time to nearly $70,000, secured upon an undivided one-fourth interest in the property described, the south half of fractional section 13, were past due, and the bank officers insisted they could not discount past-due paper; that it would be necessary for some one to make a note, and place those notes of Dobbins and the trust deed as collateral to such note, and they said it was immaterial as to whose note it was, and that was the understanding, that it was immaterial as to the note, the security being ample for the amount advanced.

Q. Did Curry have any interest in the subject-matter at all?

A. Not to my knowledge.

Q. Did Mr. Bennett, who gave his note, have any interest in the transaction?

A. None other than that he was acting for Mr. Kerr in procuring these outstanding titles. I do not know what his interest was, any further than I suppose he was paid for his services as attorney or agent in the matter; but that I know nothing about.

Q. Did he have any interest in the land itself?

247 A. Not that I know of.

Q. Was the interest of Mrs. Dobbins an undivided one-fourth of the whole tract?

A. I can simply say I understand that there was a dispute as to what her interest amounted to. What Mrs. Dobbins' title there was is a matter of record, but I understand there was some dispute about it.

Q. State what you understood about Mrs. Dobbins' title.

Objected to by Mr. Dunlevy.

A. I have no distinct understanding about it other than this: I think Mr. Dobbins himself once told me that his wife held an undivided one-fourth interest in the entire tract; on the other side, I understood from Judge Dunlevy, the attorney-in-fact, that Mrs. Dobbins' interest was simply an undivided one-fourth of Kerr's interest, and that whatever failure attached to any portion of the tract as to Kerr's title would affect hers; there seemed to be some question on that point, but whatever the title was it was entirely conveyed to Mr. Ingals, subject only to the trust deed securing the two $25,000 notes and declarations of trust made by Mr. Ingals.

Q. If I understand your statement, if Kerr recovered the entire tract the commission would not get a quarter of it under the Dobbins'

title for $90,000, but any difference between that sum and the sum fixed per acre in the agreement marked A would enure to the benefit of Kerr; is that it?

A. That $90,000 was advanced in view of that contract, and it was a general advance on the credit as Mr. Kerr's title in those premises, with Mrs. Dobbins' title as additional security only. It in
248 no way was a purchase of any particular interest. It was understood the $90,000 was to be considered as a payment on account of whatever sum of money should thereafter be ascertained as due to Mr. Kerr, which sum of money should have a credit from the time it was paid by the commission, with 6 per cent. per annum interest.

Q. There was a $20,000 reserved under this contract; what was that?

A. The contract speaks for itself, and is in the following words: "And said Kerr, as a further consideration for this contract, hereby agrees that said South Park Commission as a corporation shall be paid, or shall reserve out of the purchase-money herein provided for, the sum of $20,000 to its own use, which sum of $20,000 shall be excluded from the burden of interest from and after the first jury trial, as herein provided for; such sum of $20,000 to be so retained shall not be considered as a payment to said Kerr, but simply as a credit on the final settlement under this contract." I stated yesterday that the contract that was submitted to Mr. Morgan, Mr. Welch, and Mr. Sherman was precisely the same as that attached to Mr. Morgan's answer. I wish to correct that statement in so far as saying that after that contract was written and submitted, at the suggestion of some one—I think it was some one of the commissioners, but I will not be sure—I added in the clause that I have just read the words "as a corporation."

Q. When was your attention first called to the subject of a settlement with Mr. Kerr, and by whom?

A. That is a very difficult question to answer. I think
249 the first commissioner that ever spoke to me about it was Paul Cornell, a long while before the decree that I have spoken of in the United States court was rendered, but I took no action upon it at that time. The matter was spoken of several times as a thing that it would be well to accomplish, but I did not take any active steps towards accomplishing a compromise until, as I have testified before, after this decree was rendered in the United States court.

Q. Who then asked you to do so or brought the subject to your attention?

A. I think Mr. Cornell spoke to me first after the decree was rendered, and shortly after that I think Mr. Morgan spoke to me.

Q. Did any other commissioner?

A. It ran along for some time, and I talked with Mr. Walch about it and with Mr. Sherman about it.

Q. Did you go to see Walch about it?

A. I think I did, several times—a great many times.

Q. Did you go to see Mr. Sherman about it?

A. I saw Mr. Sherman and spoke with him several times about it, but not so often as I did with Mr. Welch, nor so often as I did with Mr. Morgan.

Q. Did the original suggestion come from Mr. Cornell or Mr. Morgan?

A. I think Mr. Cornell was the first man that spoke to me about it. I think, in talking about the decree, shortly after the judgment was rendered by Justice Harlan—I think Mr. Cornell spoke to me about it, and I think in that conversation, almost immediately after the decree was rendered, Mr. Cornell said something ought to be done to settle that case, and in his opinion it was a good time then to commence such negotiations.

250 Q. Did Mr. Morgan speak to you about it after that?

A. After that; shortly after that. It was during a conversation in reference to the decree. The subject then naturally was discussed, the decree having just been rendered.

Q. Had you been the attorney of the South Park Commission?

A. I had.

Q. For how long?

A. I think between two and three years.

Redirect examination:

Q. You have been asked to explain the reserve of $20,000 in the contract referred to as Exhibit A to Morgan's answer; do you wish to state anything more fully in regard to that than the answer already given?

A. I have no desires in the matter.

Q. Do you wish to be understood that is all there was in reference to that?

A. Oh, no; the discussion in regard to the terms of that agreement led into all manner of discussions, and it would take me weeks, and I don't know but months, if I attempted to go over the whole of it. It was a constant matter of discussion, and during that discussion I claimed of Mr. Dunlevy, the attorney-in-fact of Kerr, that some additional consideration should be made; that the commission had been to a large expense in contesting the title to this property; to which he replied that that expense was involved in fighting against their interests. I finally insisted that he should allow a sum of money to cover the expenses the commission had been to in the matter, and it was discussed *pro* and *con*, backwards and forwards, I claiming that the amount should be larger, and he finally consenting to the $20,000. I was endeavoring to do what I could for the commission itself.

251 Q. I think you have said that you did not act as attorney of the commission in this particular negotiation in the sense of acting as an attorney-at-law?

A. I so stated. They never paid me anything for it, and I never asked them to, and claim none now.

Recross-examination:

Q. Why do you claim you were not acting as the attorney of the park?

A. At the time I first commenced this negotiation with Mr. Dunlevy, or at the time it was suggested to me to commence, I stated to both Mr. Cornell and Mr. Morgan that our firm had been previously connected with the litigations concerning this contract for land; it was a fact well known to the commission that the entire matter, so far as our connection with it was concerned, so far as the contracts were concerned, was a matter of record in this case. I have spoken of Kerr *vs.* South Park Commissioners. It was a matter that had, prior to that time, all been given in evidence. The matters had all been printed at the expense of the South Park Commission, and the copies were then in their possession and in the possession of their attorney, Mr. Kales. It was known all about, but I reminded them at the time by reason of that fact I would have nothing to do with the litigation of the case; if a compromise was to be effected I would attempt to do that, and would act in the matter as the agent, and not in the capacity of attorney.

Q. Do you mean the contracts in relation to this same land?

A. In relation to this same land.

Q. Not contracts with Kerr?

252 A. Not contracts with Kerr, contracts against Kerr.

Q. Was any attempt to be made by Kerr, or on Kerr's behalf, to get at the Phillips, or Mrs. Phillips', claim for the land; did the agreement or compromise contemplate that?

A. Certainly; that agreement, in short, was this: that the value of this property should be assessed by jury, first, of that portion of the south fractional half of section 13, exclusive of the east half of the southwest quarter, under the decree entered by Justice Harlan, with the provision that in case the verdict of the jury should not exceed $2,000 per acre on the 27th of August, 1870, both parties should abide by it, and that the value of the remaining 80, namely, the east half of the southwest quarter, should also be fixed by a jury under the same limitation; and that, in case the verdict in those cases, or the award, should exceed $2,000 an acre, *that* Mr. Kerr should remit to that amount as of that date; that from this amount so found by the award of a jury in the proper court, the commission should pay any claims of any party that should establish in the courts a claim to any portion of this property such amount as the court should award, and whatever was paid for any of these outstanding titles should be deducted from the amount so agreed to be paid Mr. Kerr and should stand as a payment; and in that respect it was understood that all these outstanding titles should be brought in, the contract contemplating a complete fee-simple title in the commission.

JANUARY 30TH, 1882.

Col. THOMPSON recalled:

253 Mr. LEAMING: Look at the endorsement above the name of James Morgan, on the draft for $7,200, and state who wrote it.

A. I did.

Q. How was that originally written, and what was the condition in which it left your hands?

A. It was originally written: "Pay to the order of J. C. Dunlevy acc. (meaning account) deeds from assignee and receiver, R. E. Jenkins." Prior to its delivery I crossed out the "acc." in ink and interlined so as to make it read: "Pay to the order of J. C. Dunlevy acc. securities on deeds from assignee and receiver, R. E. Jenkins." That was the condition in which that endorsement was at the time of the delivery of the warrant to J. C. Dunlevy.

Q. Is your recollection distinct on that subject?

A. It is.

Mr. FULLER: Did you deliver the warrant to J. C. Dunlevy?

A. I did.

Q. Where?

A. At my office.

Q. Did Mr. Morgan bring the warrant then?

A. Mr. Morgan left the warrant with the secretary of the commission, with instructions to deliver it to me when I called for it. I called for the warrant, and the secretary gave it to me, and I took it to my office and there delivered it to John C. Dunlevy.

Q. When did you write the indorsement on it?

A. Just at the time I delivered it to Mr. Dunlevy.

Q. Then when you got the warrant it had been simply indorsed by Mr. Morgan in blank?

A. He indorsed it in blank, instructing me to put the necessary terms of the indorsement above his signature, which I did.

Q. The bill of Burnham, dated February 24, for five copies,
254 &c., has been identified by Mr. Harmon, purporting to ' certified by you. Did you examine it?

A. Yes, sir.

Q. Did you certify to it?

A. Yes, sir.

RICHARD S. THOMPSON.

Subscribed and sworn to before me.

H. W. BISHOP,
Master in Ch'y, &c.

255 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE SOUTH PARK COMMISSIONERS, Complainant,

vs.

JAMES MORGAN, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Thursday, the 19th day of January, A. D. 1881.

Present: M. W. Fuller, for complainant; J. Leaming, for defendant.

JOHN R. WALSH, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Leaming, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. John R. Walsh; age, 44; newsdealer; 44 Randolph St., Chicago.

Q. You are a member of the present Board of Park Commissioners, complainants in this suit?

A. Yes, sir.

Q. When were you appointed a commissioner, and when did you qualify?

A. Some time in 1878.

Q. What is your present position in the board?

A. I am president of the board.

Q. When did you become acquainted with the defendant, Morgan?

A. A great many years ago; twenty years ago.

Q. When was your attention called to this litigation between the South Park Commissioners and Kerr?

A. I knew about it long before I went into the board, and it was a theme of constant talk in the board at the time I went in.

256 Q. When was your attention first called to the possibility of a settlement?

A. During 1878; either Mr. Morgan or Col. Thompson spoke about it; I have forgotten which.

Q. Did you deem it desirable that a settlement should be made?

A. As they had been litigating 8 or 10 years, I thought an amicable settlement would be a good thing, and was glad to hear anything on the subject.

Q. Have the expenses of the litigation been heavy?

A. I don't know exactly; I believe they were.

Q. You know the fact it run along for a good many years?

A. Yes, sir.

Q. And that it occupied a considerable portion of the limits of the South Park?

A. Yes, sir.

Q. Did you give the matter any special consideration?

A. Yes, sir; I thought a good deal of the matter.

Q. It was a part of your duty as commissioner to do so?

A. Yes, sir.

Q. About when did it seem to you feasible that the settlement could be made?

A. I never believed it.

Q. When did it seem to you that it was proper to make any effort?

A. All the time I thought it was proper to hear what was said on that side of the question.

Q. Did you never believe it was feasible to make a settlement?

A. No, sir.

Q. Did you enter into any negotiations with a view to a settlement?

A. Yes, sir.

Q. Did you have any meetings?

A. Yes, sir.

Q. With whom?

A. With the counsel; with Mr. Morgan and Mr. Sherman; I spent a whole afternoon with Mr. Morgan and Mr. Sherman and Col. Thomp-on, at Mr. Morgan's office.

257 Q. What was the purport of the meeting, and what was arrived at?

A. It was all about this proposed trade.

Q. What was the special talk?

A. It was all about this proposed trade; there was a paper submitted which was full of alterations and interlineations. I presume that paper is here, or something like it. If there was any chance to settle I felt it was my duty to hear what was said on that side of the question.

Q. At that meeting did you arrive at any conclusion?

A. There was not anything definite. I did not consider it a board meeting. I went there as an individual, and not as a park commissioner.

Q. You say there was a paper presented. What was the purport of that paper?

A. This proposed trade with Kerr.

Q. Have you sufficient recollection to give a general outline of that paper?

A. Nothing except the substance of it was, Kerr agreed to give a title to the commissioners at a price not exceeding $2,000 per acre, of some date in 1870. It was filled with alterations and interlineations, and was not a complete thing. I never saw a complete copy of the paper.

Q. Did you at that time discuss the contents of the paper there presented?

A. Yes, sir.

Q. Did you go over it pretty fully?

A. All over it. I have not a good enough memory to state accurately what was in it after the lapse of two or three years.

Q. Was not the sum limiting the amount to be recovered by Kerr in any condemnation proceedings discussed at that meeting of which you have spoken?

A. Yes, sir.

Q. Did you not there talk that $2,000 was enough, and must be the outside limit?

258 A. Yes, sir; they wanted more, and we agreed they ought not to exceed $2,000.

Q. If a sum went in there it ought not to exceed $2,000 was the subject of discussion?

A. Yes, sir.

Q. Did you have any interviews after that?

A. I presume I did. I cannot state.

Q. Was there any other paper submitted to you in respect to this?

A. There may have been. I don't remember.

Q. Did you ever have a purported copy of the contract made by a type-writer given to you?

A. No, sir; not after it was finished.

Q. I do not mean after it was signed.

A. I never saw it.

Q. Never saw any copy made by a type-writer in relation to this contract, is that what I understand you?

A. I never saw any copy of the contract that was not incomplete; there was something to explain or something wanting, and I never saw a fair copy.

Q. Did you not have a copy of the paper in relation to this matter which you kept over night?

A. I think not.

Q. Have you any recollection?

A. I think so. I have a distinct recollection of staying up with Judge Dunlevy until 2 o'clock in the morning looking over papers referring to this subject and talking about it.

Q. About what time was that?

A. During all these negotiations.

Q. You don't remember of the order in which they occurred?

A. No, sir.

Q. Did you arrive at any general outline or agreement with Mr. Dunlevy in the conversation?

A. No, sir.

Q. Did R. S. Thompson give you a copy of the paper embodying the details of a proposed agreement to examine, which he left
259 with you and you kept over night?

A. He might have done that, but I have no recollection of it.

Q. When were you first informed that a paper similar to the contract we have here shown you, bearing date November 14, 1879, a copy of which is attached to Morgan's answer, marked Exhibit A, had been executed?

A. I cannot remember; some time during that year.

Q. Was it while Morgan was president of the board?

A. Yes, sir.

Q. Had you such information on or about the spring of 1879?

A. About the execution of the contract?

Q. Yes, sir.

A. No, sir.

Q. You say you have no recollection that your attention had been called to the fact?

A. To the fact Col. Thompson signed that in behalf of the board?

Q. Yes, sir.

A. No, sir; when I found out he put his name to it I thought he had done an indiscreet thing, when the board had not authorized him to sign it, and I thought it was a very queer thing he was so excessively anxious to have this trade go through.

Q. Can you tell when you learned Col. Thompson had done this thing?

A. I could not tell.

Q. Was it during the year 1879?
A. I suppose so.
Q. Did you disapprove of it as soon you heard of it?
A. As commissioner it was never brought before me for action; that is about the only way I could act on it.
Q. Did it have your private condemnation?
A. I thought about it—I didn't talk about it.
Q. I understood you to say you condemned it as an indiscreet thing as soon as you heard of it.
A. I didn't talk about that to anybody.
Q. You mean you condemned it in your own mind?
A. Yes, sir.
260 Q. And as a matter you could not approve of as commissioner?
A. As commissioner I never approved of it.
Q. Did you approve of it as an individual?
A. No, sir.
Q. Never did?
A. No, sir.
Q. Don't you recollect that during the month of May or June, 1879, you had knowledge that such a paper had been signed?
A. I didn't have that knowledge, to my recollection.
Q. Did you not as late as the fall of 1879 have knowledge that such a paper had been signed?
A. I presume I did; I knew it some time before Mr Morgan went out of the board.
Q. As near as you can tell, how long before?
A. It is no use asking me to fix the date.
Q. Fix it as near as you can.
A. Call it some time in 1879.
Q. Was it in the fall, in the summer, or in the spring of 1879?
A. I couldn't tell you; there were lots of things that went on I didn't know about.
Q. Was it before Christmas of 1879?
A. I can't fix it in '79; there is no use of putting my recollection against the paper.
Q. The paper purports to be signed in November.
A. I can't give you any date definitely.
Q. You are entirely uncertain as to date, but at some time or other you did know such a paper had been signed?
A. Yes, sir.
Q. You knew that before Morgan retired from the presidency?
A. Yes, sir.
Q. You say you did not approve of that paper?
A. No, sir.
Q. I will ask you if you do not remember discussing with Mr. Morgan and Col. Thompson the best means of carrying out this agreement during the year 1879?
261 No, sir; I don't remember any discussion of that kind.
Q. Did you not have some discussion as to a certain sum of money that should be paid?

A. There was some talk of that.
Q. Was not that during the year 1879?
A. Yes, sir; I guess it was.
Q. Do you remember the details of that?
A. Yes, sir.
Q. Please give them.
A. Col. Thompson at the time was the attorney of the board, and advised us, whether the contract was approved by the board or not, that the payment of the $90,000 would give us the Dobbins title—that interest was one-fourth of the entire tract.
Q. That was your understanding at that time?
A. Yes, sir.
Q. You have not, in fact, then paid much attention to the writing between Kerr and Thompson as the agents of the commissioners?
A. I beg your pardon, if I employ an attorney I take his word as true. I took Col. Thompson's word. I had not any reason to doubt it.
Q. Therefore you did not look over the papers?
A. There were no papers submitted to show what the Dobbins title was.
Q. I will ask you if Col. Thompson stated to you at any time the purport of the paper which he had signed?
A. What paper?
Q. The paper which he had signed on behalf of the commissioners?
A. I presume he did; he talked a good deal to me on the subject.
Q. Did you approve it as he stated it?
A. I don't recollect how he stated it.
Q. Will you state whether you did anything in relation to that contract?
A. As a commissioner?
Q. As a commissioner or an individual?
A. No, sir.
262 Q. Did you have any negotiations with the National Bank of Illinois in regard to temporarily raising money for the purpose of carrying out this contract?
A. The Bank of Illinois offered to advance money on certain notes and did so.
Q. At whose solicitation was that offer on the part of the bank made?
A. I think Col. Thompson. Mr. Morgan and myself had something to do with it.
Q. Did you go to the bank personally in regard to the matter?
A. Yes, I was in the habit of going to the bank more or less.
Q. Did you go to the bank personally in reference to this particular matter about which I have asked you?
A. About this advance?
Q. Yes, sir.
A. Yes, sir.
Q. Did the bank agree to advance the money asked for, and how?
A. The bank made an advance. I do not recollect the exact

amount of it. The gentlemen who have kept track of this thing closer than I have will tell you about it. The books of the bank will be the best evidence.

Q. About what amount did you state to the bank the advance would probably be asked for?

A. Fifty or sixty thousand dollars.

Q. Did you afterwards go to the same bank with reference to a subsequent advance?

A. There was some talk about a subsequent advance. Col. Thompson did the business with reference to that thing.

Q. Did you not personally see the officers of the bank in relation to it?

A. About what should be done?

Q. About the advance which should be made.

A. I do not remember about the subsequent advance. I
263 want to say I never knew anything about these notes of Mr. Nixon and Mr. Curry until after the talk in 1880.

Q. What was the arrangement made with the bank in regard to the advance of money?

A. It was to be advanced on the Dobbins notes, I believe.

Q. Were not these Dobbins notes past due at that time?

A. I never saw the Dobbins notes.

Q. What was your opinion about it?

A. I understood after that. I took my information on all this subject from the attorney of the board, Col. Thompson.

Q. Didn't the bank object to taking the notes directly on the ground they were past due, and there ought to be paper put in the bank which was not due, and that these Dobbins notes could be attached as collateral?

A. I presume they did, but they did not in my presence; that would have been the way to do it, I think.

Q. How was that done?

A. I don't know.

Q. Did you ever inquire at the bank how it was done?

A. No, sir; I was not a stockholder nor a director.

Q. Were you not satisfied that was the manner in which it was done at the time?

A. From my knowledge of how things are done in the bank that would be the way it would be done; that makes what is called "live paper."

Q. When you went to the bank you told them the commissioners would probably take up this paper in a short time, did you not?

A. Yes.

Q. Why did you state that to the bank?

A. I had been assured by Col. Thompson we could get the Dobbins title for this price, and the bank could not advance money unless they had some idea where the pay was to come from.

264 Q. I understand you *you* had no knowledge on any subject, except as to the Dobbins title.

A. I had no knowledge of what is in that paper. (Exhibit A. Morgan's answer.)

Q. Considerable time elapsed before any arrangment was made for taking up this paper at the bank?

A. Yes; I believe so.

Q. A period of several months?

[A.] ——.

Q. Did the president of the bank ever speak to you about it?

A. About having taken the loan up?

Q. Yes.

A. Yes; once or twice.

Q. What did you tell him in regard to it?

A. I told him I presumed it would be taken care of one of these days.

Q. You gave him assurances it would be taken care of?

A. He would not have made the loan in the first place unless he thought, no matter whether the bill went through or not, he would get his pay.

Q. I will call your attention to the resolution set out in the bill, which was passed at a meeting of the Board of South Park Commissioners on the 21st November, 1879; were you present at that meeting?

A. Yes.

Q. Did you understand the purport of that resolution?

A. The resolution states it.

Q. Was that resolution passed while you were present?

A. Yes, sir.

Q. Did you vote for it?

A. I did. I did not object to it at all.

Q. That resolution was for the purpose of having the security taken up at the National Bank of Illinois, was it not?

A. No, sir; it was for the purpose of acquiring the Dobbins title; the title happened to be there, and that followed; that was the place to get it.

Q. You do not mean to say you didn't understand the
265 money was to be paid to the National Bank of Illinois?

A. Yes; I knew they had all the papers that Mr. Thompson told me carried the title. If it had been the intention to pay the money to the National Bank of Illinois I suppose the resolution would have stated it so.

Q. Was there any discussion at all in regard to the resolution?

A. Yes; it was understood when this resolution was passed — this money was appropriated to get us the Dobbins title, which we were advised was one-fourth of the whole tract.

Q. Prior to the passage of the resolution last above referred to wasn't this contract, Exhibit A to Morgan's answer, read to the board at that meeting?

A. I do not remember. It was some meeting when the contract was to come up that I was called away. Somebody came for me, and I was gone.

Q. Was any contract in reference to the matter read at that day?

A. Not in my presence.

Q. Was R. S. Thompson present at that meeting of November 21st, 1879?

A. I do not remember; I presume so.

Q. Didn't Col. Thompson, at that meeting, read the contract, or purported contract, of the meeting in your presence?

A. No, sir; he did not.

Q. Wasn't the contents of the contract stated there?

A. Publicly at the board?

Q. Yes; prior to the passage of the resolution?

A. Not in my presence.

Q. Didn't you at that time know the contents of this contract?

A. I knew what Judge Dunlevy was trying to do; certainly.

Q I want to ask you if this contract was not read, or the substance of it stated, in your hearing?

A. The paper was never read in the board meeting in my presence.

266 Q. Did you not know the contents of it at that time?

A. In detail?

Q. Yes.

A. Not certainly, except the limitation as to price.

Q. Wasn't the paper, a copy of which is marked Exhibit A, attached to Morgan's answer, read to you or in your presence at the office of the South Park Commissioners on 21st November, 1879?

A. I do not think it was. I am positive that paper was never read at a meeting of the board.

Q. I will ask you if, on the 21st day of November, 1879, at the South Park office, in the city of Chicago, you were not present when a paper, of which Exhibit A, attached to Morgan's answer, is a copy, was read in the presence of yourself and several commissioners who were members of the commission, but when the commission was not then in session?

A. I have not any distinct recollection on that point, but I want to state clearly—never at any time when the Board of South Park Commissioners was in session was this paper present for action, in my presence, during 1879.

Q. On the 21st day of November, 1879, above spoken of, when the commissioners were assembled in the office of the South Park Commissioners, after they had been called to order and some business transacted, and before any formal adjournment had taken place, wasn't the subject-matter of this contract of November 14, 1879, discussed in the rooms of the commission, among the commissioners?

A. I refer you to the record. About that time it was the fashion to fool the reporters. I do not want to cast any reflection on

267 Mr. Morgan, because he was not responsible for that. I repeat—during no session of the South Park board was this paper ever presented in my presence.

Q. Then you make in the answer to the foregoing interrogatories the mental reservation that you would not consider what occurred between you as commissioners during the time referred to a part of the formal proceedings of the board of commissioners?

Objected to as leading, incompetent, and not cross-examination.

A. I have said twice that the paper was never presented during any session of the board when I was present—in 1879; that ought to be enough, it seems to me.

Q. You mean to be understood as saying that paper above mentioned was neither present or discussed in your presence in the office of the South Park Commissioners on the 21st of November, 1879?

A. I did not say it was not.

Q. Then will you explain what you mean?

A. It might have been talked of before or after the session of the board.

Q. Was it?

A. I don't remember.

Q. You have no recollection?

A. No, sir.

Q. You have no recollection of the subject-matter of that paper being referred to in any way that day?

A. No, sir.

Q. In your presence either before the board of commissioners or as individuals?

A. I should not have any recollection on the subject unless I was present.

Q. I will ask you if on any other day it was talked of?

A. Yes, I guess so.

Q. At or about what time?

A. I have no doubt but what it was.

Q. Do you remember it was?

268 A. I presume it was talked of there as elsewhere; it was talked all over everywhere where we met.

Q. Wasn't that contract discussed on the very day of the passage of the resolution in your presence?

A. It might have been.

Q. What is your best recollection?

A. I presume it was.

Q. Wasn't the contract there present?

A. Possibly.

Q. What is your best recollection?

A. I told you I don't remember the thing in that shape at all.

Q. You have some recollection whether it was or was not?

A. I have some recollection of Col. Thompson talking to me about it and Mr. Morgan talking to me about it.

Q. I suppose you are well satisfied that you knew its contents?

A. Of course.

Q. Do you not recollect the fact that Commissioner Price appeared to be incensed at not having been consulted in reference to this contract?

A. Yes, sir.

Q. Wasn't a copy of the contract then handed to Mr. Price for him to examine?

A. Yes, sir.

Q. Wasn't the subject of the immediate passage of the contract postponed at the request of Commissioner Price?

A. You had better ask Mr. Price.

Q. Did he not make the request to give him time to examine it?

A. You had better ask Mr. Price; I was not present when he asked that.

Q. Have you any knowledge of any facts which led you to suppose that any portion of the $90,000 mentioned in the resolution of November 21st, 1879, was misappropriated by Mr. Morgan or Col. Thompson, or any one connected with the commission?

A. Oh, no, sir.

Q. Were you present at a meeting of the Board of South Park Commissioners held on the 24th of April, 1880, at which
269 Joseph F. Bonfield, attorney for the board, submitted a report containing the following: "The foregoing are all the papers that have been submitted to me for the purpose of giving an opinion as to their value. I am informed that your former president, Mr. Morgan, invested about $92,000 of the park funds in the land described in the deeds, known as the Dobbins title, evidenced by these notes and papers. I am informed also no formal authority was conferred by the commission to make this purchase, unless it was conferred by the resolution passed December 27, 1879, by which Mr. Morgan, as president, was authorized to invest $92,000, park funds, at his discretion, as the foregoing documents have been surrendered by Mr. Morgan to the park authorities without any explanation of his transactions or accompanying connection."

A. Yes, sir.

Cross-examination by Mr. FULLER:

Q. What is your best recollection as to whether the contract marked Exhibit A was exhibited in any form to any of the persons who were commissioners on the 21st of November, 1879?

A. I cannot recollect it was exhibited that day, although I should not say it was.

Q. You have stated that you voted for the resolution of November 21, 1879?

A. Yes.

Q. Did you at that time understand that the resolution in any way ratified the contract marked Exhibit A?

A. No, sir.

Q. Did you intend as a South Park Commissioner and voting for that resolution to ratify that contract?

A. No, sir; I should not have voted for the resolution if I thought it would have amounted to a ratification of it.

Q. You have stated that the $90,000 was for the purpose
270 of getting the Dobbins title at the time of the passage of the resolution of November 21, 1879. For what was the $90,000 to be paid?

A. To acquire the Dobbins title in this tract in question. I understand the Dobbins title to be one-fourth of the entire tract.

Q. The receipt is annexed to the papers for certain notes and so on. What did you expect in reference to the shape in which the commission was to receive the Dobbins title?

A. A deed of the property—a deed for the undivided one-fourth interest, or of deeds enough to convey an undivided one-fourth interest in that tract, variously estimated from 190 to 220 acres. I think Judge Dunlevy said it was 220.

Q. Do you know whether the tract in question contains 196 or 220 acres?

A. No, sir; I do not.

Q. You have been asked whether you recommended to the National Bank of Illinois to make some advances. State under what circumstances you did that.

A. These negotiations were going on, and I was advised by Col. Thompson, I believe, that the papers on which the advance was to be made would carry with them the Dobbins title, or rather that they covered that title, and in that case they would be a good security to the bank for the advance; whether the contract went through or not the bank would get the money.

Q. It is stated by Col. Thompson that the understanding was that whether the contract went through or not the $90,000 was to be applied as payment on whatever might be coming to Kerr or his representatives in the case of Kerr *vs.* South Park Commissioners. What was your understanding?

271 A. That was not my understanding at all. I did not understand it was to be a payment on account at all. I understood it was absolutely for the commission to get whatever interest Mr. and Mrs. Dobbins had in the tract. Mrs. Dobbins at that time, I believe——

Q. Do you mean both Mr. and Mrs. Dobbins?

A. As I understand the history, it was originally sold to Dobbins and before his bankruptcy it was transferred to Mrs. Dobbins.

Q. You mean the Dobbins title?

A. I mean the Dobbins title—the thing we know as the Dobbins title, which was one-quarter of the entire tract.

Q. While the negotiations to which you have referred were going on, did you have any conversation with Commissioner Price about it?

A. Yes, sir.

Q. About when?

A. I could not tell you. I told Mr. Price I should not vote to ratify the contract.

Q. Was the contract submitted to the board as a board at any time when you were present for ratification?

A. No, sir; unless Judge Dunlevy's offer within a year or so might be called a submission.

Q. To what do you now allude about Judge Dunlevy?

A. A year or so ago he came around to the office on Fifth avenue and brought a paper with him and wanted the commissioners to ratify the contract or carry it out, or something of that kind. It was offered there, but I do not think it was read.

Q. Did the commissioners vote on that occasion to carry it out or ratify it?

A. No, sir.

Q. That was about a year ago, you think. Was it since the filing of this bill, September 9, 1880?

A. I guess it was.

Q. You think it was since the bill was filed?

A. Yes, sir.

Q. Was the proposition entertained at all?

A. No, sir.

272 Q. You have spoken of Col. Thompson as the attorney of the commissioners at the time these negotiations were going on. Was he such attorney?

A. Yes, sir.

Q. Did he inform you personally that in the matter of this tract of land he could not act as attorney for the commissioners?

A. No, sir.

Q. Do you remember who first suggested any settlement with Kerr?

A. It was either Mr. Morgan or Col. Thompson. You mean suggested it to me?

Q. Yes, sir.

A. Yes, sir; either Morgan or Col. Thompson.

Q. Do you know when it was first suggested to Commissioner Price?

A. I could not tell you.

Q. Your attention was called to some report made by Mr. Bonfield. Had any written report been made to the board in reference to the Dobbins title or the payment of the $90,000, that you remember?

A. No, sir; I never saw that receipt until after Mr. Morgan went out of the board.

Mr. LEAMING: You have no perfect recollection as to dates, have you?

A. I do not fix particular dates in my mind.

Mr. FULLER: Q. Do you know anything about the notes of Nixon, Curry, and Bennett?

A. No, sir.

Q. Do you know who drew the resolution of November 21st, 1879?

A. I do not.

JOHN R. WALSH.

Subscribed and sworn to before me.

H. W. BISHOP,
Master in Ch'y, &c.

273 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE SOUTH PARK COMMISSIONERS, Complainant,

vs.

JAMES MORGAN *et als.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Thursday, the 19th day of January, A. D. 1882.

Present: M. W Fuller, for complainant; J. Leaming, for defendant-.

JOHN B. SHERMAN, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. LEAMING, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. John A. Sherman; age, 56; business, farming.

Q. You are one of the Board of South Park Commissioners, plaintiffs in this suit?

A. Yes, sir.

Q. How long have you been a member of that board?

A. Since about 1877.

Q. Have you any knowledge or recollection or attempted adjustment of the matters in controversy in regard to the south half of fractional section 13, 38, 14, lying in the east part of the park, and known as the Kerr and Dunlevy tract?

A. Yes, sir.

Q. Will you state fully what knowledge and participation you had in any attempted adjustment?

274 A. I talked it over with Mr. Walch and Mr. Morgan; the matter had been up before us and talked over. I have so many things in my head this thing had got all out of it.

Q. Do you recall a meeting in 1879, at the office of James Morgan, in this city, respecting a proposed agreement between Kerr and the commission?

A. Yes, sir.

Q. Do you recall what occurred, and who were present?

A. Mr. Walch, Mr. Morgan, and myself, and Col. Thompson, if I recollect right.

Q. What was said and done at that meeting?

A. Mr. Morgan was president of the board and Col. Thompson was attorney, I think; we were there to talk the matter over; what was done I don't recollect.

Q. Was there any writing in respect to the matter presented to you there?

A. I think there was.

Q. Did you examine that writing?

A. I think it was read there—read over.

Q. Did you enter into any discussion in regard to it?

A. I think that it was clearly talked over, the whole thing; read over and talked over; that is my recollection about it.

Q. Was there any agreement arrived at at that time in regard to the contents of that paper, as among you three?

A. Not as park commissioners, I do not think, but I think the matter was talked up, and we decided amongst ourselves what we thought it was best to do. That is my recollection about it.

Q. Did that paper embody your views as it was there presented? This was not a formal park meeting?

A. No, sir.

Q. A meeting of you individual commissioners and Col. Thompson?

A. Yes, sir.

Q. Did you discuss the subject of this adjustment between the commission and Kerr, and fully say that the paper there presented expressed your views at that time?

275 A. I think we discussed the matter as to what we thought would be for the best interest of the commission provided it could be carried out.

Q. Did you arrive at any conclusion?

A. I think we did.

Q. Was the discussion mainly on the amount per acre which should be the maximum price in condemnation proceedings?

A. The discussion was, if the property could be purchased at a certain price, whether it would not be better to do it, I think, than to go into a condemnation proceeding. I am very shaky in regard to this thing; it is quite a long time ago, and I have had so much else in my mind I have lost track of this thing.

Q. Would you remember the contents of the paper if the paper was now shown you?

A. I do not think I would.

Q. Do you remember whether the paper provided for an adjustment of these matters between the commission and Kerr?

A. My idea is, if it could be done—if it could be got at a certain price—then we were to recommend it, I think, to the commission to take it at that price. It seems to me that is my idea of it.

Q. Does the paper now shown you, which is attached to the answer of James Morgan as Exhibit A, embody the matters which were discussed between you at the meeting above spoken of at Mr. Morgan's office?

A. I think it does, as far as I recollect.

Q. Do you remember whether the maximum price was agreed on there at that meeting?

A. I think there was a price talked over and that we concluded it would be the best thing we could do provided it could be got at that; that is if the board would agree to it.

Q. Do you recollect Col. Thompson coming down to your house after this with the paper and saying Dunlevy had agreed to the sum?

276 A. I think he did; that is my recollection of it.

Q. Did you tell Mr. Thompson at your house that he might sign that paper as an agent, but not to bind the board until it was submitted to the board, or words to that effect?

A. No, sir; I don't think I did.

Q. Do you remember what did occur?

A. I think Mr. Thompson said he would sign it on his own responsibility and take the chance of our confirming it.

Q. Did you agree to that?

A. I had nothing to agree to.

Q. Did he explain to you his signing it would not bind the board until their formal action?

A. He did.

Q. Do you recall a meeting on the 21st of November, 1879, at which a resolution authorizing the drawing of warrants for $90,000 had passed? Perhaps I should call your attention a little more fully to the meeting; the resolution will call your attention to it.

(The witness read the resolution.)

A. Yes, sir.

Q. Were you present at the board meeting at which that resolu- was adopted?

A. Yes, sir.

Q. Previous to the adoption of the resolution, was not the contract or paper above referred to as Exhibit A to Morgan's answer read to the members?

A. I think not; I don't recollect anything of the kind.

Q. Was it not read to the members there present?

A. I think not.

Q. Was it not read to them as individuals before the passage of the resolution?

A. I do not recollect the reading of that paper only in Mr. Morgan's office and at my house—the only recollection I have of seeing that paper or hearing it read.

Q. Do you remember whether Col. Thompson was at that meeting?

A. I do not.

277 Q. Do you remember what occurred at that meeting at which that resolution was passed; don't you remember the paper being read over at that meeting and Mr. Price objected to it?

A. I don't recollect the paper being read at that meeting. Mr. Price used to object to almost everything. I could not place him at any particular meeting. My idea of that is simply this: I thought Mr. Morgan understood this matter thoroughly and I trusted it all to him. I knew he would do what was best for the best interest of the commission. That was my idea of it at the time.

Q. Don't you remember, or did you not understand at the time of the passage of the resolution, there were securities at the National Bank of Illinois to be taken up for which this resolution was necessary to be passed?

A. I understood there were some papers Mr. Morgan was going to take up in the interest of the park board with this money, but where they were to be taken up or how, I have forgotten all about; it has passed out of my mind entirely. He was to examine into

the matter, and if he thought best and thought proper he was to take some certain papers that were just the same to the park as money. That is about my recollection of the thing now. The thing was principally left to Mr. Morgan.

Q. At that time you knew the contents of the contract referred to as Exhibit A?

A. Yes, sir; I had read that paper.

Q. Were you not prepared to act on it in the board at that time?

A. I do not know after that; it was not brought up before the board.

Q. I understood you to say you had no recollection of this paper having been brought up before the board on the day of the passage of that resolution or before the individuals composing the board, or any of them, on the day of the passage of the resolution above referred to.

278 A. That was my answer.

Q. Do you not remember Mr. Price asking time in which to consider this contract as having been the first time his attention was called to it?

A. No, sir; I know this paper was always talked of as not to amount to anything only simply our judgment as citizens—not to amount to anything unless verified by the board. We talked it over as citizens, and it was not to amount to anything or anything come of it until it was ratified by the board.

Q. But as a citizen you did understand the contents of the paper, and had assented to it as a private man, not as a member of the board?

A. After reading it and looking it over and understanding what I did about it, as a private individual I considered that it was the best thing that could be done; not as a park commissioner.

Q. That was the expression of three of you, was it not?

Objected to.

A. That was my expression; I cannot speak for the other gentlemen.

Q. Have any facts come to your knowledge with respect to this transaction which have led you to believe that the money appropriated by that resolution was improperly used by Mr. Morgan or Mr. Thompson, or any part of it in any way?

A. I could not say.

Q. Whether any fact has come to your knowledge that has induced you to believe that?

A. I do not know what has been done about it.

Q. I am asking you if any facts have come to your knowledge. (Question repeated.)

A. The only thing I have ever understood about it is something about papers that had not been brought forward that should
279 have been brought forward. That is the only thing I understood about it. There are some papers—titles or something—

that Mr. Morgan had not brought forward. I know nothing of it personally, only as I have heard it talked of.

Q. Do you know anything about the appropriation?

A. No farther than that resolution.

Q. That is all the knowledge you have—just what the resolution expresses?

A. Yes, sir.

Q. Have you any reason to believe that Mr. Morgan or Col. Thompson acted in bad faith in regard to the appropriation of any portion of this money?

A. I have heard our attorney of the board state—Mr. Bonfield, I think it was—that there was some paper that Mr. Morgan took this money to apply on that had not been brought back to the board. That is all about the matter I have ever heard of. I think it was Mr. Bonfield made that statement that we passed a resolution for Morgan to take the money and apply it, and that Morgan had applied the money, and had not returned the papers to the board. I think Mr. Bonfield made that statement.

Q. That is not quite an answer.

A. You need not put it down as an answer. I am making it as a statement, as I understand the matter.

Q. Did you ever see the receipt given to Mr. Morgan for the paper taken by the bank?

A. No, sir; I did not see it.

Q. Do you know what papers Morgan returned to the commission?

A. I do not.

Cross-examination by Mr. FULLER:

Q. Do you remember at the interview at Mr. Morgan's office that the question of the Dobbins title was discussed, or any reference to a claim of Mrs. Dobbins or Thomas S. Dobbins, or both, to part of the land talked about?

280

A. I think there was.

Q. Can you recall what proportion of the land it was that was claimed by the Dobbins, one or both of them?

A. My recollection is 40 acres.

Q. Was it any specific number of acres?

A. I think it was.

Q. In regard to this money appropriated by the resolution of November 21st, 1879, what was your understanding at the time; was it appropriated to get up a particular interest in the land?

A. I think that was the idea—some interest.

Q. When Mr. Bonfield, as you say, referred to the non-delivery of a paper or papers which were to be obtained by Mr. Morgan for the money, can you recollect whether that referred to what is known as the Dobbins papers or the Dobbins title? It did refer, as I understand you, to the obtaining of a specific interest.

A. Yes, sir.

Q. Did you understand it was an advance of money to take up notes or payments on account?

A. Yes, sir; that is the way I understood it. I will state we had

the utmost confidence in Mr. Morgan's, and we came to this conclusion and authorized him to take this money and do so and so with it, provided he could do it and clear up certain matters and bring the papers. That is my understanding about this thing in a few words, and we trusted the matter to Mr. Morgan to do it. I had perfect faith in Mr. Morgan, and I have not altered my opinion of him yet. My faith is just as strong in Mr. Morgan as it ever was—when we ordered him to do that business.

Q. But you cannot remember the particular papers or interest that were to be acquired by that payment?

A. No, sir; I could not.

281 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COM'RS, Complainant,

vs.

JAMES MORGAN, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday the 20th day of January, A. D. 1882.

Present: Mr. Fuller, for compl't; Mr. Leaming, for def't.

PAUL CORNELL, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Leaming and deposes and says as follows:

Q. State your name, age, residence, and occupation.

A. My name is Paul Cornell; age, 59 years; residence, Hyde Park; occupation, lawyer by profession.

Q. What is your relation to the plaintiffs in this case?

A. I am one of the South Park Commissioners.

Q. How long have you been a Park Commissioner?

A. Thirteen years next April.

Q. During the year 1879 was your attention called to any proposed settlement of the litigation between the South Park Commissioners then pending in the circuit court of the United States for the northern district of Illinois?

A. Yes, sir.

Q. Did you know generally that negotiations were pending with a view to a settlement of the litigation?

A. I did.

Q. At a meeting of the board November 21, 1879, was your attention called to a paper purporting to be an agreement be-

282 tween the South Park Commissioners by R. S. Thompson, agent, and William B. Kerr by John C. Dunlevy, attorney-in-fact, of which Exhibit A, attached to Morgan's answer, is a copy?

A. My attention was called to the contract at that meeting.

Q. Were you present at a meeting of the South Park Commissioners on that day?

A. I was.

Q. You may state what was done there in relation to this contract, or proposed contract, if anything.

A. The contract was presented to the board at that time by Col. Thompson, and [I] read it over carefully. It was the first time I had ever seen the contract; although I knew there were negotiations going on in which Mr. Morgan, Mr. Sherman, and Mr. Walch were particularly giving strict attention to, and had been for some days; but the culmination of their negotiations, as I understood it at the time, was presented to the board in substance in the contract which was then read by Col. Thompson, and I understood that it was the unanimous opinion of Mr. Morgan, Mr. Sherman, and Mr. Walch that it was a judicious and proper contract to make. After hearing the contract read myself, and after looking at it with considerable care during a considerable portion of the afternoon, after the routine business of the commission had been finished, we concluded that it ought to be carried out, with the exception of Mr. Price, who stated that he had not had time to investigate it, as he was in the condition I was and had not particularly seen the terms of the contract before that day. Out of deference to Mr. Price it was laid over, as I understood it, to a future meeting of the board.

Q. What was then done?

A. Then it appeared there had been a certain amount of
283 money obtained from the bank for the purpose of securing that contract or carrying it out. Some one of the bank had spoken to myself and several others about certain money the commission ought to pay on certain securities where the money had been drawn from the bank, as I understand, by Mr. Walch, and they would like to have it closed up. I think the president of the bank asked me prior to that meeting if I would not see it was done at the next meeting of the board. After talking over the matter a little with the board Mr. Walch said it ought to be done, and requested that a resolution be drawn authorizing the proper officers to pay it, or take up the indebtedness, whereupon the resolution was drawn, I think, by Col. Thompson, and I was requested to offer it. I think I did. Here is a copy of it (resolution of November 21, 1879.) I would like to state the reason why I thought it was proper. We had been in litigation in this case for many years, and had carried it on with great vigor under the advice of different attorneys, in whom we had confidence, and Mr. Kales, more particular than any other, stated about that time, or some weeks previous to that, that he thought it was a proper time for the commissioners to make a move to settle the case, and stated to me his reasons privately why, which I fully concurred in. I immediately began to cast around in my way to devise some plan by which a settlement could be made. I first went to the commissioners earnesly requesting Col. Thompson to see what he could do, and to see if he could not devise some plan to be presented to the board by which it could be settled. I remember one time, I think it was in the presence of Mr. Morgan, I do not remember just — it came round;
there was some propositions from the Phillips interest,
284 by which it appeared to me that that interest might be pur-

chased. In fact, it was offered for $100.000. Knowing of the parties as I did and their great want of money, which I thought they needed at that time, I thought if we went to work to obtain a settlement we could accomplish it, and I went to Mr. Morgan and asked him if he would not take hold with Mr. Thompson and try and effect it. The result was this contract was finally —, after, as I understood, a great deal of care and attention upon the part of Mr. Morgan, Mr. Sherman, and Mr. Walch particularly, who had consented to undertake the negotiations, as before stated. When it was brought into the board I felt they had given it due consideration and that it ought to be effected.

Q. Do you recollect whether or not the resolution of November 21, 1879, was introduced on account of the postponement of the consideration of that agreement?

A. There is no doubt about that.

Q. When did you first speak to R. S. Thompson about attempting to effect some compromise of the matters in dispute between Kerr and the commissioners?

A. I guess it was six or eight months previous to that; it must have been six months at least. I should think it was six or eight months previous to that.

Q. How long after the decision of Justice Harlan was this?

A. I remember the conversation I had with Mr. Kales was soon after the decision. He thought it was the time to push the negotiation. I think I went to Col. Thompson about that time or very soon afterwards. I will say this: At that time, from what I could see, and the urgent propositions that were made to me by different parties at the same time who seemed to have the Phillips interest in charge, I thought it
285 could be settled. I thought the Phillips interest could be purchased at what I thought was a reasonable rate, and this contract I suppose would close the thing all up—all the outstanding interest—in a very short time. I thought so from the fact Mr. Dunlevy and Col. Thompson knew about what Phillips asked. Col. Thompson had tried, I think, to negotiate the Phillips interest also, and I thought it could be closed up in a short time.

Q. I will ask you if your understanding of the proposed resolution was to relieve the bank in accordance with some prior arrangement between the bank and some one of the commissioners, or was it to purchase a specific portion of the land in controversy in contravention to the proposed agreement?

A. It was done at that time for the purpose of relieving the bank. I guess the bank was negotiating to have it closed up.

Cross-examination by Mr. FULLER:

Q. It was not done, then, with any view of ratifying the proposed contract?

A. At that time?

Q. Yes, at that time.

A. Well, as I say, it was done for the purpose of paying the indebtedness that had been made at the bank that I then supposed had been advanced for the purpose of making this contract.

Q. What was the advance made for; was it not to get certain securities?

A. I understood the terms of the contract to be that not a dollar of the money should be paid from the treasury of the commission until we had received *quid pro quo* for it, or I never should have voted for it, never should have sustained it. I understood that
286 he received double security in every instance; that the commissioners were to pass upon that security themselves for every single dollar that should be advanced to Mr. Dunlevy for the purpose of taking up outstanding titles, and that Mr. Kerr's and Dunlevy's entire interest should be held—that is, the bulk of it—as security until these outstanding interests were entirely liquidated; and, furthermore, it should be done with dispatch and speed, in order that we might get rid of this interminable litigation. And I will say further that I consulted with Judge Trumbull and with the eminent counsel we had at that time, and Mr. Kales, and those that I had great confidence in, whose judgment I had confidence in, and I felt that my long familiarity with the case, with the condemnation proceedings, that it was very important it should be done.

Q. Now, in the payment of the $90,000, did you not understand it secured the papers which carried an interest in the contract in question?

A. In regard to that, I was not familiar with the details of the negotiation that had been going on by Mr. Morgan, Mr. Walch, and Mr. Sherman, whom I knew had met frequently to consider that matter; in fact, I wished to be relieved from it. I thought those three men were competent quite as much as I was, and I felt it was in good hands, and when they asked for this money I felt it my duty that they should be sustained, and that the money should be paid. Just how that money was to be used in the details of the negotiation I would not say at that time I knew, but I had such confidence in them I thought it was proper they should have the money.

Q. Did you hear any discussion about what was called the Dobbins interest?

A. Yes.

287 Q. When?

A. Various times, but particularly at that time. We thought we were getting a sufficient interest in those securities to be sure and safe for the money we then advanced.

Q. The $90,000?

A. Yes.

Q. You notice under the contract that reference is made to the 80 acres, in respect to which the bill of Kerr had been dismissed by Judge Harlan. In speaking of the Phillips interest, do you mean the Phillips claim upon the 80 acres?

A. I mean, of course, the settlement of the entire matter, the entire suit, and that I felt then if it were pushed properly it would be the end of the litigation, and the whole Phillips claim could be purchased. I knew they were in distressing want of money, and I

was satisfied it could be done, and I thought it was going to be done.

Q. Did you observe that Mr. Dunlevy or Mr. Kerr was undertaking to enter into a contract in regard to the whole tract?

A. I did.

Q. Had you any *any* assurance that Mr. Kerr or Mr. Dunlevy had negotiated with the Phillips at all?

A. I had supposed that those that were interested in the attorneys so interested themselves that it would be brought around; that the proportionate shares would be purchased. That is what I supposed.

Q. You mean the attorneys representing the Phillips interest?

A. All the attorneys in the litigation in different ways. I have been spoken to by a good many of them.

Q. Did you understand at the time of the passage of the resolution of November 21 that that money had relation to the Dobbins securities?

A. I understood it was to be paid on these securities; in
288 other words, these securities were to be obtained for the money, so we would be safe in advancing it.

Adjourned to Jan'y 23, 3 o'clock p. m., at which time a further adjournment was had.

289 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS, Complainant,

vs.

JAMES MORGAN *et als.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 20th day of January, A. D. 1882.

Present: M. W. Fuller, for complainant; J. Leaming, for defendant-.

JAMES MORGAN, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. LEAMING, and deposes and says as follows:

Q. State your name, age, residence, and occupation?

A. My name is James Morgan; age, 54 years; residence, Hyde Park, and place of business, Chicago.

Q. You are one of the defendants?

A. I am.

Q. You are acquainted with the contents of the bill of complaint filed in this cause?

A. I am.

Q. And with the land mentioned therein?

A. I am.

Q. Will you state generally your connection with this transaction and the facts as they occur?

A. Soon after the rendition of the decree by Judge Harlan, in the United States circuit court, in the case of Kerr *vs.* The South Park Commissioners, and, I think, while we were perfecting the appeal in that case, Mr. Francis H. Kales, who was then the attorney of the board, and who had special charge of the litigation in
290 that case, I believe, from its inception, urged upon me the necessity of a compromise of that litigation. He said that the litigation had proceeded to a point where he thought it was for the interest of the commission to effect a settlement if possible, and upon subsequent interviews he frequently urged upon me to do what I could to bring about a fair settlement of the matter. I was at that time a South Park Commissioner and president of the board. Subsequently Judge Dunlevy came to me and asked me whether the matter could not be settled—whether an amicable and fair adjustment could not be reached. After talking with the different commissioners upon the subject I asked Col. Thompson to see what could be done with reference to such a settlement. Col. Thompson, as the agent of the commission, undertook to bring about a settlement of the Kerr interest of the south fractional half of section 13. That negotiation lasted for several months. Finally, after a great deal of negotiation, Col. Thompson reported that he had arrived at what he thought was the best settlement that could be got of the Kerr interest. We then called an informal meeting of Commissioners Walch, Sherman, and myself, together with Col. Thompson, at my office, with reference to the agreement that they had arrived at. That agreement in its material features was the same agreement attached to the answer of James Morgan as Exhibit A. The principal difference was in the amount of the upper limit in this way; the contract provided for a condemnation, or that a jury should be summoned to fix the value of the property in the United States circuit court, under and by virtue of the decree
291 of Judge Harlan. That contract provided that in case the jury should render a verdict over and above $2,500 an acre on the average, then Mr. Kerr should remit all down to $2,500 an acre. In case the verdict was below $2,000 an acre Kerr agreed to abide by the verdict as set forth in the contract. I objected to so high a limit, and insisted that the limit must be reduced to $2,000 an acre; that the commission had paid $2,000 an acre for adjoining property. That agreement met the approval of all the commissioners present with that exception, and Col. Thompson then was instructed to so notify Judge Dunlevy. After some further negotiations Judge Dunlevy, on behalf of Mr. Kerr, consented that the upper limit should be reduced in the contract to $2,000 an acre. Soon after it became necessary to raise funds in the Kerr interest under the contract; whereupon Commissioner Walch had interviews with the officers of the National Bank of Illinois to raise funds for Mr. Kerr. A little above $80,000 was borrowed of the bank in connection with the carrying out of that contract. On the 21st day of November, 1879, at the regular meeting of the Board of the South Park Commissioners, the contract between Kerr and the South Park Commissioners in the amended form as attached to my answer as

Exhibit A, signed by William P. Kerr, by John C. Dunlevy, his attorney-in-fact, and the South Park Commissioners, by Richard S. Thompson, its agent, was read over by Richard S. Thompson to the assembled park commissioners, there being present Commissioners John R. Walch, John B. Sherman, Paul Cornell,
Cornelius Price, and myself, a full board, it having been
292 previously understood between all the commissioners, excepting Commissioner Price, that action should be taken upon that contract by the board to ratify and confirm the same. After the contract was read over Commissioner Price objected to the confirmation of the contract at that meeting, giving as a reason that he had not had sufficient time to examine into its merits properly. Out of deference to Mr. Price's feelings it was mutually agreed that we would lay it over for another meeting. It was then brought to the attention of the board that this indebtedness had long become due at the National Bank of Illinois, and that they were urging the different members of the commission for payment of the same, and that as a matter of good faith on the part of the commission that indebtedness should be taken up; whereupon Commissioner Walch requested Col. Thompson to draw the resolution, a certified copy of which I annex to my deposition and mark Exhibit A. I distinctly remember at the time that I was not in favor of the passage of that resolution, although I voted for the same, but I desired to act directly upon the contract itself and either confirm it or reject it then and there. That resolution was drawn because of the non-action of the board upon the contract itself and for the purpose of taking up those securities, and for such other purposes as might be necessary to perfect those securities, and for no other purpose that I ever knew or heard of. The resolution directed me as president of the board to take up those securities; whereupon the warrant, dated November 29, 1879, for $82,800, payable to the National Bank of Illinois that held those securities, was drawn for the purpose of taking up those securities
293 at the bank, which the different members of the board had given the bank authorities to understand should be taken up by the commission. Subsequently, on the 26th day of February, 1880, a second warrant was drawn for the sum of $7,200. That warrant was drawn payable to the order of James Morgan. When so handed to me by the secretary I remonstrated with him for having drawn the warrant payable to my order, and insisted that he should have the warrant changed. He said that he could not do so, as Mr. Price, the auditor, who had to countersign all warrants drawn upon the treasury, was away, and he could not reach him; whereupon I indorsed the warrant in blank and left *in* in his possession to be given to Col. Thompson, as the agent of the commission, to perfect those securities, which warrant I have never seen from that day to this. On or about April 6th, 1880, I took all the notes and papers which I had received as the proceeds of those bonds to the secretary of the South Park Commission, and explained to him the whole transaction, taking from him an explanatory receipt, a copy of which is attached to my answer, marked Ex. C; naturally supposing that I

had done all that was necessary to be done in relation to the matter, and supposing that all the individual members of the commission perfectly understood the whole transaction as well and as fully as I myself, I had no intimation whatever that the commission, or any of its members or officers, ever desired any further explanation of this matter from me until I saw printed in the public press of the city of Chicago what purported to be a copy of a report made by Joseph F. Bonfield, as attorney of the Board of South Park
294 Commissioners to their meeting, which report falsely, and, as I believe, maliciously, accused me of drawing $92,000 of park funds without any formal authority from the board, and without making any explanation of my transactions, to which I published a reply in the public press, being the same mode by which I had first received information on that subject, which is attached to my answer, marked Exhibit B.

Q. When you surrendered to the commission the papers or securities which you say you had taken from the bank, did you furnish the secretary with a memorandum or statement of how the amount was made up?

A. I did, and he noted at the bottom of the receipt in pencil as follows: "$30,325, note of Nixon; $32,225, note of Curry; $1,250, 4 months interest on above notes; $21,000, note of John I. Bennett; total $82,800; warrant to National Bank of Illinois to pay this amount; $7,200, note of Curry, for which warrant 5035 was given; total footing, $90,000, as per resolution November 1st, 1879."

Q. Did the secretary keep a copy of the receipt and memorandum to which you have referred?

A. He told me that he took a copy and that he handed it to Mr. Bonfield with the securities mentioned therein upon which he made the report.

Q. Did you ever receive any portion of the sum named in the two warrants spoken of for your own use, or anybody on your behalf receive any portion of the same in any way?

A. No, sir; I never received any money in connection with the whole transaction, and never saw any money in reference to it. I never saw any of the $90,000 in cash.

Q. Did any of the commissioners or any other person on their behalf ever ask you for an explanation as to the disposal of that $90,000, or any application of the security obtained therefor?
295 A. No, sir; unless a bill may do it.

Q. When was the first intimation to you there was any misunderstanding on the part of the commissioners as to the placing of these warrants?

A. When I first saw in the public prints of Chicago the proceedings of the meeting and a copy of the report of Joseph F. Bonfield published in those communications.

Q. Did you receive a copy of that report of Mr. Bonfield subsequent to the time you saw a publication of it?

A. I did. I received from the secretary a copy of the proceedings of that meeting, so far as that report was concerned, and it did not

ask me to make any explanation—simply sent me the proceedings of the meeting.

Q. What form did it come in, as a written copy or a slip from the newspaper?

A. It came partly in writing and partly in a printed slip. The proceedings, I think, were wholly in print, slips cut from the papers.

Q. You may state how that was conveyed to you, whether it was a certified copy.

A. A certified copy of the report of Joseph F. Bonfield, which report was a printed slip cut from some newspaper pasted upon the paper, to which was attached the secretary's certificate.

Q. What was the date of that communication?

A. The date of the certificate is the 27th day of April, 1880. I supposed that to be the day on which it was posted to me.

Q. In what year was the meeting of which you have spoken—where Commissioners Walch, Sherman, and yourself and Mr. Thompson were present?

A. That was in the year 1879; I think in the month of April, at my office.

Q. Was the subject-matter of the proposed contract between Kerr and the commission fully discussed there?

296 A. Yes, sir; it was discussed for the whole afternoon.

Q. You have said, I believe, it was reduced to writing?

A. Yes, sir.

Q. Was any conclusion arrived at at that meeting as to whether it was best to adopt a contract of that kind or not?

A. If Col. Thompson could get the upper limit in the jury trial reduced to $2,000 an acre, then that contract would be perfectly satisfactory to all the commissioners then present.

Q. Did you say subsequently the paper was modified as you had directed at that meeting?

A. I did.

Q. Do you know what was done with the paper?

A. There was a paper embracing that contract so changed as to meet the objections or to overcome the objections to the former contract or the uncompleted contract handed to me by Col. Thompson for examination. I kept it over night to more thoroughly examine its provisions and conditions and give the matter full study, and then I returned it to him on the following morning for the purpose of showing it to the other commissioners.

Q. During the time of the preparation of this writing and of this negotiation did you have any interviews with Dunlevy as representing Kerr?

A. Frequently had interviews with him.

Q. There has been something said about the intended purchase by the commissioners of the Dobbins title. I will ask you if Dunlevy, on behalf of Kerr, did not make it a *sine qua non;* that the contract with him should be for the whole of what is known as the Phillips tract?

A. I understood Judge Dunlevy would not enter into any contract

or compromise for anything short of a conveyance embracing the whole of the property.

Q. In any of the interviews between you and R. S. Thompson, John R. Walch, and J. B. Sherman was there ever any
297 conversation among any of you relating to any other purchase or settlement of this matter than that embodied in the paper attached to your answer marked Exhibit A so far as the purchase of the Dobbins title or the Dobbins interest was concerned?

Objected to as leading. Question withdrawn.

Q. What, if any, conversations during the progress of this negotiation to which you have referred occurred between you and R. S. Thompson, John R. Walch, and J. B. Sherman, or any of you, with reference to the purchase of the Dobbins title or the Dobbins interest, other than that what was embraced in the paper attached to your answer marked Exhibit A?

Objected to as being cross-examination and as leading.

A. There was never any talk or any conversation with any one connected with the commission or with Col. Thompson with reference to the purchase of the Dobbins title of Dobbins directly by the commission. Any attempt to purchase such a title by the commission would have been a violation of good faith, as contrary to the negotiations we were then carrying on to obtain the title to the whole property through Kerr.

Q. About what time were the terms expressed in the paper marked Exhibit A, attached to your answer, agreed on?

A. About the 14th of May, 1879.

Q. What was the occasion of the delay after the terms had been arrived at?

A. The delay of presenting it to the board, do you mean?

Q. The delay in presenting the agreement to the board.

A. Judge Dunlevy did not wish that the contract should be made public, as he had contracted in that agreement to make a title to the whole property to the commission, and therefore it was necessary for him to get in outstanding titles which, if the parties
298 owning them had known of the existence of this agreement, would have demanded an unreasonable price for the same, knowing his obligation to procure them.

Q. At the time this agreement in May was arrived at, of which you have spoken, was there any understanding or agreement that any arrangement should be made as between you, Walch, Sherman, and Dunlevy, so that money might be advanced on securities held by Dunlevy by the National Bank of Illinois?

A. Yes, sir; it was understood, and the agreement itself provided for the taking up of these identical securities, to wit: The two notes of Thomas S. Dobbins at $25,000 each, and that it would be necessary for Dunlevy to obtain money from the commission to enable him to perform that contract, and Commissioner Walch made an arrangement with the National Bank of Illinois to procure the necessary money.

Cross-examination by Mr. FULLER:

Q. You heard Mr. Walch testify yesterday, did you?

A. Yes.

Q. He states that he voted for the resolution of November 21, 1879, in consideration that the $90,000 mentioned in that resolution should be paid for the Dobbins title; what do you say as to that testimony?

A. I say that that is not so, for this reason, that the object of the resolution was to pay up the bank indebtedness; that the officers of the bank had from time to time spoken to Mr. Walch and the other commissioners, and urged upon them the necessity of taking up those securities in accordance with the understanding, and that that resolution was drawn simply because they neglected to act upon the contract at that meeting to bridge over the time between that meeting and the next meeting, when it was understood that contract should be ratified.

299 Q. Was the money borrowed of the National Bank of Illinois in the first instance for the purpose of securing the Dobbins title?

A. No, sir.

Q. What was it borrowed for?

A. Judge Dunlevy represented that it was necessary for him to have so much money to carry out that contract.

Q. Were you informed why he needed so much money as that?

A. Simply that he needed it to get up outstanding titles.

Q. Is it your understanding that the money was to be given to Judge Dunlevy without any reference to what he proposed to do with it?

A. Under the contract?

Q. He was to have the right under the contract to call for any money he wanted; was that it?

A. He could call for any; it was within our discretion whether we would furnish it or not.

Q. You understand the contract gave him the right?

A. To the payment of those notes?

Q. To the payment of money, irrespective of the use to which he proposed to put the money.

A. Some portions of it.

Q. In the case of the $90,000 I understand you to swear that you do not know to what use he was going to put that money; do you so swear?

A. Yes, sir.

Q. You did not know and were not informed that it had any reference to getting a particular title?

A. No, sir.

Q. You did not know and were not informed that it had any reference to acquiring the Dobbins title?

A. No, sir; other than under the contract; I suppose it may have been under the contract; I do not know as to that.

Q. What in your judgment is the number of acres in the tract of land in question here?

A. You mean now?

Q. In 1870 and 1879.

A. I have no knowledge of my own upon the subject in
300 1870; I have upon inquiry been informed that it contained about 220 acres; I think Mr. George W. Wait told me so; he was the engineer of Hyde Park, and familiar with the property, and formerly the engineer of the park.

Q. When did he tell you so?

A. He told me so some time during the negotiation when we were arriving at the amount of land that it should be conceded there was at the time we were making the contract—the contract with Kerr.

Q. Had you heard at the time of the negotiation the extent of interest which Mr. or Mrs. Dobbins claimed?

A. One-fourth of the south fractional half of section 13, less lots 8, 10, and 15, of Phillips' original subdivision of a portion of the west half of the southwest quarter.

Q. An undivided one-fourth part, was it not?

A. Yes, sir.

Q. You consider that $2,000 was a fair maximum to put into the proposed contract?

A. I considered it fair.

Q. Now, if the Dobbins title was to one-fourth of 220 acres of that lot, where was the inducement, if the Park Commissioners could get that one-fourth for $90,000, to give Dunlevy the difference between 90,000 and a quarter part of the number of acres at $2,000?

A. I never knew what the Dobbins' would sell their title for. It was not a question that ever came up in any way, shape, or manner that I know of. There was no negotiation with reference to it that I know of. Judge Dunlevy, on behalf Mr. Kerr, declined to enter into any agreement except for the whole fractional half of the section, less the lots mentioned in my previous answer.

Q. Assuming the entire tract to be 220 acres, a decree had been rendered dismissing Kerr's bill as to 80 acres, and the Dobbins deeds are described in this contract as carrying one-fourth part of the whole contract. If that were over 50 acres, and the bill
301 had been dismissed as to 80 acres, what power had Dunlevy over the 220 acres that rendered it an inducement to give him $90,000 to buy a quarter part of the people that he did not control? What I mean is this: Assuming that you wished to get what title he had, what were the inducements, under the facts I have stated, to allow him to do the dealing with all the other claimants to that land? Did you consider his title so important, or the Kerr title so important, that you wished to leave it entirely to Dunlevy to deal with all other claimants?

A. I considered the payment of the $90,000 upon the contract for the whole tract, feeling that we had ample and abundant security for the money so advanced and a guaranty upon the whole of the Kerr interest for the faithful performance of the contract in getting in the title to the whole property.

Q. Were you informed prior to or during the negotiations that

Mr. Kerr or Mr. Dunlevy had any contract with the holders of the Dobbins title which prevented those holders from dealing directly with the South Park Commissioners?

A. I understood there was a contract by which the Dobbins interest could not be sold to the South Park Commissioners.

Q. Who informed you of the existence of such a contract?

A. Judge Dunlevy did, I know, and I think other parties did besides.

Q. Did you ever see any such contract?

A. No, sir.

Q. What other parties do you think could have told you that?

A. Mr. Kales told me so, I think, that he understood there was such a contract, and that has been the general understanding in the commission. I think Mr. Bowen has told me the same thing, and I do not know but Mr. Cornell has; it was the general understanding

Q. So that it was impressed on your mind that Dobbins
302 could not sell without Dunlevy's consent?

A. That was the substance of the contract. I do no- know its terms, but that is the substance of it. I understand that was the condition of the sale of the Dobbins interest, a contract of that kind when it was purchased by the Dobbins.

Q. That the Dobbins would not sell to the South Park Commissioners?

A. I think Kerr bound Dobbins at the time of the sale. Now, I know; Mr. Bowen told me of it himself, when the sale was made, that they secured from Dobbins an agreement that he should not convey that property or sell it to the South Park Commissioners.

Q. Prior to these negotiations represented in the proposed agreement, ma ked A, had you caused any investigations to be made as to whether there was any such contract or not, or as to the validity of any such contract, if it existed?

A. I never investigated the subject, but I was fully impressed with the belief that there was such a contract.

Q. And that belief had its influence upon your mind in the progress of the negotiations, I suppose?

A. Yes, sir.

Q. This proposed contract, marked A, provides for the ascertainment of the value of the 80 acres as to which Judge Harlan had dismissed Kerr's bill?

A. Yes, sir.

Q. Did you discuss with Judge Dunlevy how he proposed to control the Phillips' 80 acres?

A. No; Judge Dunlevy claimed that he intended to recover the whole thing. Whether he could or not I do not know, but I considered it to the advantage of the commission to make a clean thing of the whole business, so that when these condemnation suits or suits to ascertain the value of the property were settled it would settle the rights of all the parties who claimed title to any portion of the property.

Q. But what I am trying to get at is upon what theory it
303 was that you assumed that Judge Dunlevy could control the

80 acres that Judge Harlan had just decided that Kerr did not own?

A. I did not assume any such thing. Even taking the ground that he could not absolutely, the contract provides that he agrees to do it, and if we have to get them from outside parties the amount that we pay over and above the amount that would be decreed by the jury should be taken out of the money to be paid to Kerr under the contract.

Q. Wasn't there a contract between the South Park Commissioners and Phillips?

A. Yes, sir.

Q. For obtaining whatever went to Phillips at $800 an acre?

A. Yes, sir.

Q. What became of that contract in your mind in view of the proposed agreement marked A?

A. That contract Phillips claimed was not valid; that it was obtained by fraud and every other corruption, and that his interest in the matter might be very small and difficult to establish in the commission, and in addition I will say there is an amount of $20,000 mentioned in the contract to be allowed to the commission out of the money to be paid to Kerr under the decree, which would be a clear gain as an offset against any property that might have been acquired under the litigation for Phillips.

Q. If I understand you, Mr. Dunlevy claimed that he could upset Judge Harlan's decree; was that it?

A. He claimed he could.

Q. Did he desire to control that litigation in the Supreme Court of the United States?

A. Under the contract?

Q. In the negotiation.

A. Yes sir.

Q. He proposed, did he not, to represent both sides of the case in Washington?

A. I did not take that view of it.

Q. What did he desire to do in the case?

A. I suppose that he desired that the commission should depend upon that contract to obtain title to the whole of the property,
304 and not prosecute the litigation at the expense of the comsion on behalf of Phillips any further; in other words, to leave Judge Dunlevy and any other claimants there might be in that property to fight it through the Supreme Court as they might choose.

Q. The case was then pending on appeal by the commissioners in the Supreme Court of the United States. If the commissioners dismissed their appeal it would leave the decree just as it was. How did Judge Dunlevy propose to get rid of Judge Harlan's decree, which he had entered in the United States circuit court?

A. He never told me how he calculated to do it, but you will notice in the contract that the separate pieces of property mentioned in the contract are to be conveyed by separate and distinct deeds; and if he failed to obtain the title to any of those pieces of property to such

as he did obtain the deeds *were* would carry, and for such as he did not obtain the title to the contract provided that he should make the commission good. In other words, such amount as the commission may have to pay to other parties to get in those titles, if it exceeded the amount that it was agreed to be paid by the terms of the contract, it was to come out of the money or the price to be paid for the other tracts.

Q. What particular interest was it that Mr. Dunlevy was desirous of securing; and in order t enable him to do that he wished the contract not brought before the court in the first instance?

A. I suppose to get in any of the outstanding titles. If he could arrange with Phillips or any of the claimants—Mrs. Phillips or the Dobbins, or any one else, wherever he could buy in a portion—it was to give him an opportunity to buy in such as he could. The terms of the contract itself states that not as to the time, but con-
305 templates the purchasing in of these interests and the payment and advance of money with reference to them, not specifying any particular interest, but any interest necessary to perfect his title to the whole.

Q. As a commissioner you had some information as to some of the titles—I mean some of the claims upon the land?

A. Yes, sir.

Q. Mr. Walch says, and Mr. Sherman also, this contract was not read on the 21st day of November, 1879; I understand you not to agree with them?

A. I say most positively and most emphatically, without any doubt or hesitation, that I know it was read, and I heard it read in the presence of those gentlemen, and previous to going into the meeting it was the general understanding and talk between the commissioners that they intended to pass upon that contract at that meeting, with the exception of Commissioner Price.

Q. Had Commissioner Price been consulted previous to the meeting?

A. I do not understand what you mean by consulted.

Q. Talked with with reference to bringing the contract before the meeting?

A. Not that I know of. I will say this, that Mr. Price understood that there was a negotiation going on with reference to a settlement of that interest. I do not know that he was as fully advised of all the terms, conditions, and provisions, and how it was expected to be done, &c., as some of the other commissioners, but he had a general knowledge that the negotiation was going on and that there was an effort being made in the commission to compromise and get in titles to that piece of land.

Q. So far as this contract is concerned Mr. Dunlevy claimed to represent the Kerr interest, did he not?

A. Yes.

Q. You did not negotiate with Mr. Dunlevy because of superior abilities in him as a negotiator of other people's titles and without reference to his representing the Kerr interest, did you?

306 A. No, sir; we dealt with him because he represented the Kerr interest. Mr. Kerr called upon me soon after the rendition of the decree by Judge Harlan, and told me personally that Judge Dunlevy represented him in this matter.

Q. Then what is your knowledge of information conveyed to Mr. Price in relation to negotiations to get in the whole title as contradistinguished from the negotiations with the representative of Kerr?

A. I cannot say there was any definite represenation or understanding as to the amount we were getting in. It was a simple and general talk amongst the commissioners. We were trying to arrive at some settlement of this litigation and get in the title, and there was negotiations going on to accomplish that end.

Q. Did you say that the contract was brought before the Board of South Park Commissioners on the 21st of November, 1879?

A. Yes, sir.

Q. And at the request of Commissioner Price the board in session laid it over until some other occasion?

A. Yes, and then proceeded to the adoption of that resolution.

Q. You say that Commissioner Walch asked Col. Thompson to draw the resolution?

A. Yes.

Q. Did Col. Thompson draw it?

A. Yes.

Q. The receipt for certain papers that you have identified as dated April 6, 1880; did you receive a communication from the secretary of the board shortly after and prior to the 27th of April in relation to the papers named in that receipt?

A. No, sir.

Q. You have named all the communications you did receive, have you?

A. Yes.

Q. What time did you cease to be a member of the park board?

A. On the 1st day of March, 1880.

Q. You say the $82,000 or $90,000 was paid to perfect the securities; what do you mean by that?

307 A. No, sir; I say the $82,800, for which the warrant No. 4782, dated November 9, 1879, was drawn, was drawn for the purpose of taking up the securities that were held by bank, and for no other purpose whatever; and, it appearing that there might be some outstanding claims that might affect those securities, a warrant for $7,200 was drawn, and for which — that receipt, the declarations of trust from Fred. A. Ingals, and the note of Curry for the amount, it being necessary to have some specified document to base these proceedings upon.

Q. Who was Mr. Curry?

A. I do not know; I never saw him in my life.

Q. Were you ever informed who he was?

A. No, sir.

Q. Do you know where he lives?

A. No, sir.

Q. You say that Mr. Walch had interviews with the National Bank of Illinois to raise funds for Mr. Kerr; upon what do you base that statement?

A. He told me so himself, and I think the bank officers told me he had been in there.

Q. What did Mr. Walch tell you?

A. Mr. Walch told me that he had made arrangements with the bank to advance money on those securities.

Q. Did he say anything about the Dobbins title?

A. No, sir.

Q. Not a word?

A. No, sir.

Q. Did you ever hear him say anything about the Dobbins title during the progress of the negotiations to which you have referred?

A. I have no recollection of his having said anything of the kind.

Q. Then you would not say that during the informal meeting at your office, at which Mr. Walsh, Mr. Sherman, and Col. Thompson, and yourself were present, the subject of the Dobbins title was not discussed?

A. I say it was not discussed.

Q. Why was that an informal meeting?

A. It was not a meeting of the board; that is what I meant; it was a meeting of the different commissioners as individuals
308 to prepare a contract which met our views and which we thought would meet the views of the board.

Q. It was a kind of caucus to prepare a measure to be formally adopted by the board if the board chose to do so?

A. Yes, sir.

Q. It was the intention, was it not, that that contract, in order to become a binding instrument, should be passed upon by the board as a board?

A. Yes; there was no intention in that meeting to bind the board to anything.

Q. Was there any intention at the meeting of the board of November 21, 1879, to bind the board to that alleged contract by anything which was done by the board at that meeting?

A. The board never acted directly upon the contract at that meeting.

Q. Did it act directly upon the contract at any meeting?

A. Not that I know of, other than you may say by authorizing that resolution and the drawing of the money to take in those securities, which are part of the securities mentioned in the contract; there was no vote on the contract itself; that is what I mean.

Q. I understood you to say that the consideration of the agreement with a view to its adoption was postponed at the instance of Commissioner Price?

A. Yes; formal action on the contract.

309 *South Park Commission.*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, H. W. Harmon, secretary of the commission aforesaid and custodian of its records and files, do certify that the following is a true copy of a resolution adopted by the said commission on the twenty-first day of November, A. D. 1879.

Com'r Cornell offered the following resolution, which was adopted, Com'r Price not voting.

Resolved, That the president of this board is hereby authorized to make such settlement and adjustment of the litigation regarding the south half of fractional section 13, T. 38, R. 14, and such purchase of the title thereto, as in his judgment may be advisable, and for that purpose to draw from the treasurer of this commission a sum not exceeding the sum of ninety thousand dollars before reporting the same to this board, and that the auditor is hereby instructed to sign the necessary warrants for said sum of money, or so much thereof as called for.

In testimony whereof I have hereunto set my hand and the seal of the said commission this nineteenth day of January, A. D. 1882.

[SEAL.] H. W. HARMON,
Sec'y of the South Park Commission.

310 This is a copy of the proposed contract between Wm. P. Kerr and the South Park Commissioners.

EXHIBIT "A."

This memorandum of agreement, dated the 14th day of November, A. D. 1879, made by and between the South Park Commissioners, by R. S. Thompson, its agent, of the one part, and Wm. P. Kerr, by John C. Dunlevy, his attorney-in-fact, of the other part, witnesseth:

That whereas long continued litigation has existed between the parties hereto, and is now pending in relation to the title to the south fractional half of section thirteen (13), T. 38 N., R. 14 E., of 3rd P. M., Cook county, Illinois, except lots 9, 10, and 15 of Phillips' original subdivision of a portion of said tract, and said parties hereto are mutually desirous of ending the same, it is therefore agreed by the parties hereto that said Kerr and his wife shall make a deed or deeds of quit-claim and conveyance, with covenants of further assurance, to said South Park Commissioners for said fractional half of section 13 (except lots 9, 10, and 15, aforesaid),
311 and deliver said deed or deeds in escrow to Jeremiah Leaming upon the terms hereinafter named; said Kerr agrees to perfect in said South Park Commissioners a good and indefeasible title to said premises as soon as practicable.

Said parties mutually agree that the price to be paid by said South Park Commissioners for said premises shall be fixed by a jury in the United States circuit court for the northern district of Illinois as follows: For that portion of said tract lying in the southeast frac-

tional quarter of said fractional section 13 and the west half of the southwest quarter of said section 13 (except lots 9, 10, and 15 aforesaid), according to the direction of, and under and in pursuance of, the decree entered in the case of William P. Kerr *vs.* the South Park Commissioners *et al.* in said court, with this limitation and expressed stipulation, that the maximum price for said lands shall not exceed the sum of two thousand dollars per acre on the average, as the value on the 27th day of August, 1870, and that in case the jury, empaneled pursuant to said decree, shall find a verdict for a larger sum than said $2,000 per acre on the average as the value of said land on said 27th day of August, 1870, then and in that case said Kerr agrees to remit so much of said verdict as shall be in excess
312 of said sum of $2,000 per acre on the average on the said day as aforesaid, and shall in that case be entitled to a decree for that sum and interest according to said decree entered in said cause, and said parties agree to stand to and abide by any verdict so rendered as aforesaid which shall not exceed the sum of $2,000 per acre on the average as the value of said premises on the said 27th day of August, 1870.

Said parties further mutually agree that as to the eighty acres, being the east half of the southwest quarter of said fractional 13, that when the title thereto shall be established in said South Park Commissioners, or whenever said parties hereto may mutually agree upon a trial to fix the value thereof, then the price to be paid by said commissioners for said eighty acres shall be determined by a jury in said United States court or other court of competent jurisdiction, and under the same limitations, stipulations, and conditions as are above set forth for the remainder of said premises, it being expressly agreed that the average value per acre, hereinbefore referred to, shall apply to the entire premises included in this contract.

It is further mutually agreed by said parties hereto that
313 the title to said premises shall be vested in the said South Park Commissioners to the satisfaction of R. S. Thompson, its attorney, prior to the right of said Kerr to demand payment of any portion of the amount of the decrees, judgments, or purchase-moneys (other than the amount herein agreed to be paid as a first payment) decided necessary by said Thompson to be reserved by said commissioners to secure the faithful performance of this agreement on the part of said Kerr.

But said South Park Commissioners shall have the right at any time to pay said Kerr on account of the purchase-money of said premises, or any part thereof, such sum or sums of money as they may from time to time desire, either before or after said jury trial, without waiting for the title to be fully established in said commissioners and thereby stop interest on the amount thus paid, and said South Park Commissioners shall be entitled to a credit on account of the purchase-money for said premises as against said Kerr for all such payments to him to the amount thereof and interest thereon from the date of such payments at the rate of six per cent. per annum.

It is further mutually agreed that said commissioners shall
314 from time to time, as may become necessary for the purchase or compromise of any outstanding title, claim, or litigation, advance to said Kerr, on *on* his written order or that of his attorney-in-fact, on account of the purchase-money of said premises, or any part thereof, for such purchase or compromise, such sum or sums as shall be asked for by said Kerr or his attorney-in-fact, and approved of by said Thompson, acting for said South Park Commissioners; which said advance shall be a credit on account of the purchase-money as against said Kerr for said premises for the amount thereof, and interest thereon from the date of such advances at the rate of six per cent. per annum, and the same shall be so credited as a payment on said decree or judgment on the verdict rendered as aforesaid.

It is further agreed that all payments by the South Park Commissioners on the amount due on the following-described notes to the holder or holders thereof shall be taken and considered as a payment of so much of the purchase-price for said premises and entitle them to credit therefor, with interest from the date of such payment, towards satisfaction of the judgment or decree to be rendered as aforesaid, to wit, two notes dated Chicago, Nov. 26, 1872,
315 each for the sum of $25,000, payable on or before the 1st day of June, 1874, with eight per cent. interest from Dec. 1, 1872, interest payable semi-annually on the first days of December and June in each year, at the banking-house of Tyler, Wrenn & Co., in Chicago, said notes being made by T. S. Dobbins, payable to the order of himself, and by him endorsed, said notes being endorsed with a statement that interest thereon is paid to June, 1874, said notes being secured by trust deed made by Daniel T. Rhodes to Daniel A. Jones, trustee, and John B. Drake, successor in trust, dated Nov. 26, 1872, conveying the undivided one-fourth part of the south half of fractional section 13, T. 38, R. 14 E., of 3rd P. M. (excepting therefrom the north third of lot three and lots 9, 10, 11, 15, and 16 in Phillips' subdivision of the west part of said half section), said notes being for part of the purchase-money.

It is further agreed that any and all sums of money which said South Park Commissioners shall hereafter pay out or expend under any orders, judgment, or decree of court, for or on account of the title to, or in the way of damages for the taking or occupation of, said premises, or any portion thereof (except the costs and expenses in the case of Kerr *vs.* The South Park Commissioners *et al.*
316 aforesaid, and of the jury trial or trials therein and herein provided for as to value), shall be considered and taken to be a payment to said Kerr on account of the purchase-money herein provided for, and such payment shall bear interest from the date thereof, and be credited against such payment or decree to be rendered on said verdict; and, further, that in the event of a new trial or trials, the same limitations, credits, and agreements herein provided for shall obtain and apply thereto as are herein provided for the first jury trial, and all payments or advances to said Kerr or his attorney, or made at either's request in writing, or re-

quired to be paid under the order, decree, or judgment of a court as aforesaid, shall be considered and taken as a judgment on account of the purchase-price herein provided for, and as a satisfaction of whatever judgment or decree shall be entered in said verdict in said case of Kerr *vs.* The South Park Commissioners *et al.*, to the extent of such payment or advances, and interest thereon from the date thereof, provided that in any suit brought against said South Park Commissioners to establish any title to said premises adverse to said Kerr's title, or of those claiming under him, or to enforce any claim against said South Park Commissioners for money on ac-
317 count of any title or conveyance therefor heretofore made to them, or for damages for possession or occupation of said premises by any claimant other than said Kerr, or parties claiming under or through him, said Kerr or his attorney-in-fact shall have the right to designate the attorneys to be employed on behalf of the South Park Commissioners, and control such litigation, said Kerr to pay the expenses of such litigation and save said commissioners harmless from any such claim or demand, and if said Kerr or assigns shall not vigorously resist and defend any such claim said South Park Commissioners may do so at his expense.

Said Kerr agrees to deliver the deeds in escrow to said Jeremiah Leaming, as herein provided for, within thirty days after the date of this agreement, and said deeds shall be so delivered in escrow as follows: One deed for the southeast fractional quarter of said section 13, one for the west half of the southwest quarter of said fractional section 13 (except lots 9, 10, and 15 in Phillip's first subdivision therein), one for the south half of the east half of the southwest quarter of said fractional section 13, and one for the north half of said east half of the southwest quarter of said section 13; and said deeds shall be delivered to said South Park Commissioners
318 upon the payment by said commissioners of the amount of the purchase-money found to be due under the terms of this agreement for the lands therein described, respectively—that is to say, upon the payment for the land in any one of said deeds described, such deeds shall be delivered to said commissioners upon demand.

The quantity of land to be conveyed and paid for under this agreement was, it is agreed, two hundred and twenty acres on said twenty-seventh day of August, 1870. And said Kerr, as a further consideration for this contract, hereby agrees that said South Park Commissioners, as a corporation, shall be paid or shall reserve out of the purchase-money herein provided for the sum of $20,000 to its own use, which sum of $20,000 shall be excluded from the burden of interest from and after the first jury trial, as herein provided for; such sum of $20,000 to be so retained shall not be considered as a first payment to said Kerr, but simply as a credit on the final settlement under this contract.

It is further hereby expressly agreed and understood that whatever titles and claims said South Park Commissioners now hold or have to said premises, or any part thereof, shall not be claimed as

adverse to the undertaking herein of said Kerr to establish
319 perfect titles to said lands in said South Park Commissioners, but they may stand and be taken as contributory to said Kerr's undertaking, so far as the same can be legally and equi-bly held and taken so to do, and that this agreement, so far as any such titles or claims are concerned, shall be construed so as to require said Kerr to allow said commissioners credit for such amounts only as said commissioners shall be hereafter required by any order, judgment, or decree of a court hereafter entered (said Kerr or his attorney-in-fact being notified and admitted to defend as aforesaid) to pay, by reason of any such titles or claims, or either of them, with interest from the date of such payments; but such sum is not to include any cost or expenses in the case of Kerr *vs.* The South Park Commissioners *et al.*, or the jury trials as aforesaid, to fix the value. The South Park Commissioners shall pay the sum of $50,000 as the first payment on this contract of purchase when the deeds of said Kerr and wife shall be delivered in escrow as aforesaid and said payment endorsed thereon.

WILLIAM P. KERR,
By JNO. C. DUNLEVY,
His Attorney-in-Fact.

SOUTH PARK COMMISSIONERS,
By RICHARD S. THOMPSON,
Its Agent.

320 EXHIBIT "C."

Receipt of Harmon, Secretary, to James Morgan

Received of James Morgan, late president of the board of South Park Commissioners, a promissory note for $30,325.00, dated May 14th, 1879, and signed by Wilson K. Nixon, payable to the National Bank of Illinois; also received a promissory note dated May 26th, 1872, for $25,000.00 bearing interest at the rate of eight per cent. per annum from December 1st, 1872, signed by T. S. Dobbins, the payment of interest being endorsed on said note to June, 1874, said note being held as collateral security to the above-described note of $30,325.00.

Also a trust deed from Daniel P. Rhodes to Daniel Jones on the undivided one-fourth part of the south half of fractional section 13, township 38, range 14 east, save and except therefrom the north one-third of lot 3, and lots 9, 10, and 11, and 15 and 16, in Phillip's subdivision of the west part of said half section given to secure said
note of twenty-five thousand dollars, and a like note of the
321 same amount, hereinbelow described.

Also received a promissory note for $30,225.00, dated May 15th, 1879, and signed by Llewellyn Curry, payable to The National Bank of Illinois; also received another promissory note, date- May 26th, 1872, for $25,000.00, bearing interest at the rate of eight per cent. per annnm from December 1st, 1872, signed by T. S. Dobbins, the payment of interest being endorsed on said note to June, 1874,

said note being held as collateral security to the above-described note of $30,225.00.

Also received the promissory note of John I. Bennett, dated November 14th, 1879, payable to the National Bank of Illinois, for twenty-one thousand dollars; also received the promissory note of Llewellyn Curry for seven thousand two hundred dollars, dated February 26th, 1880.

Also received two declarations of trust made by Fred. A. Ingalls, one dated November 14th, 1879, in which he sets forth, amongst other things, that he holds the title by quit-claim deed dated November 12th, 1879, from Mary C. Dobbins and Thomas S. Dobbins, her husband, to the south one-half of fractional section 13, township 38, range 14 E. in trust to secure the payment of the note of John I. Bennett for twenty-one thousand dollars, etc., the other declara-
322 tion of trust dated Feb. 26, 1880, and sets forth that he holds the title derived through the following-described deeds, namely:

Deed from Robert E. Jenkins, receiver of estate of Thomas S. Dobbins, in case — Morris R. Hunt is complainant and said Dobbins *et al.* are defendants in U. S. circuit court for the northern district of Illinois.

Robert E. Jenkins, assignee of Thomas S. Dobbins, in bankruptcy, to Frank I. Bennett, and from Frank I. Bennett, all conveying the interest of said Dobbins in south half fractional section 13 aforesaid.

First. To secure the payment of the within-named sum of twenty-one thousand dollars. Second. To secure to the holder thereof the payment of seven thousand two hundred dollars, evidenced by note of Llewellyn Curry, bearing date Feb. 26th, 1880, being proceeds of warrants No. 4782, dated Nov. 29th, 1879, for $82,800, and No 5035, date- Feb. 26th, 1880, for $7,200.

In accordance with the resolution of the Board of South Park Commissioners, passed at their regular meeting on the 21st day of November, A. D. 1879.

H. W. HARMON,
Secretary of South Park Commissioners.

Chicago, 4–6–'80.

323 30,325. } Note of Nixon.
30,225. } Note of Curry.

12,504 was interest on above notes.
21,000, note John I. Bennett.
82,800 warrant to Nat. Bank, Ill., to pay this amount.
$7,200 note Curry, for which warrant 5035 was given.
$90,000, as per resolution 21st Nov., 1879.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS, Complainants,
vs.
JAMES MORGAN *et al.*, Defendants.
} Cross-bill.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 24th day of January, A. D. 1882.

Present: Mr. Fuller, for complainant; Mr. Leaming, for defendant Morgan; Mr. Bennett.

JOHN I. BENNETT, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. F. I. Bennett, and deposes and says as follows:

Q. State your name and whether you are a defendant in this suit.

A. My name is John I. Bennett, and I am one of the defendants in this case, and I have put in an answer and filed a cross-bill.

Q. State the circumstances under which your note for $21,000 involved in this suit was executed.

A. Some time prior to the 12th day of November, 1879, as representing Mr. Kerr, I had been negotiating with Mary C. Dobbins for whatever interest she had in the south half of section 13, 38, 14, through Mr. Gibbons, her attorney, and at that date had arrived at an agreement as to price. Understanding that there was some sort of agreemnt in contemplation between the South Park Com-
325 missioners and Mr. Kerr, by which moneys were ready at the National Bank of Illinois, I went to the bank expecting the money was there, but was there told by the representatives of the Park Commissioners, and I am of impression Mr. Morgan, as one of them, in the presence of the officers of the bank, that the necessary steps had not been taken by the commission to provide the ready money, but that it was understood by the commission that future action would be taken, and the bank officers were requested to advance the money in anticipation of the action of the Park Commissioners; it was suggested to put it in the form of a note, and I executed the note, a copy of which is appended as an exhibit to the bill of complaint in this case and the power of attorney connected with the note; with that understanding, that the paper would be surrendered as soon after as the commission should consummate the contemplated contract, the cashier of the bank drew the checks, and my impression now is, although I have not been able to get the original checks, I requested Mr. Bradley to look them up, and he tells me this morning he has not had time to do it; it required $21,000 to consummate the purchase of Mrs. Dobbins' interest, subject to the existing mortgages on the property; my impressions are the checks were drawn by the cashier to the order of the parties to whom it should be paid, with the exception of, perhaps, one check of $1,000, which was also used in this purchase; I took the checks and went to the office of Mr. Gibbons, where Mrs. Dobbins was

waiting; the deed was presented and executed, or rather, I think, then it had been executed and the acknowledgment taken by Mr. Gibbons, Mrs. Dobbins' attorney; he was an attorney and he had the deed there; the checks were delivered, and I think,
326 so far as Mr. Monroe was concerned, he not being there, he had left the receipt for his check in advance. I took the deed and went back to the bank and delivered it to Mr. Thompson. I was a little in doubt whether I delivered it to Mr. Thompson or Mr. Morgan, but my memory being refreshed I think I delivered it to Mr. Thompson at the bank. It was then understood that my note would be surrendered in a short time when the necessary action should be taken by the Park Commissioners at the same time the deed was delivered. I understood that there was a declaration of trust, as the deed ran to Ingalls to be executed, or was executed, and I think the bank officers so understood it, which for the time being would secure the money advanced by Mr. Ingals, to whom the deed ran. The deed was prepared, I think, by the Park Commissioners, or under their direction. The Mrs. Dobbins deed I desire to have, the original checks, and also to have Mr. William H. Bradley to testify, who was present part of the time, at least while the business was being transacted in the bank; Mr. Nash, I think, was there, and other of the bank officers, I think, were there at the time.

Cross-examination by Mr. FULLER:

Q. What is your recollection as to the number of the checks?

A. My personal recollection is there were four checks, but on seeing the note and seeing the copy of the deed on record my memory is refreshed as to the amount of the checks; it being some time ago I had, until this morning, got the total amount too large in my recollection.

Q. What is your recollection now?

A. My recollection now is there were three checks amounting in the aggregate to $20,000 and drawn to the order of parties other than myself.

327 Q. To the order of what parties?

A. One of the checks—the larger one—was to the order of Mrs. Mary C. Dobbins, another to Henry S. Monroe, who was understood to have an interest with Mrs. Dobbins in the property and who was a party to the negotiation, and one to Mr. Gibbons, the attorney. This was in pursuance of Mr. Gibbons' suggestions as to the division that way.

Q. What was the amount of the check to Mrs. Dobbins?

A. I would not be able to state that positively. My impression is that the check to Mr. Gibbons was for a thousand dollars; it may be five hundred. The check to Mr. Monroe was $3,000, and the check to Mrs. Dobbins was either $16,000 or $16,500; that would be the way I would divide it now. I would prefer not to state it positively, as the checks themselves are in the hands of the bank and can be produced.

Q. This deed of Ingals, I believe you said something about it being prepared by the Park Commissioners?

A. Yes.

Q. What is your knowledge on that subject?

A. I think Mr. Thompson prepared the deed.

Q. You mean "by the Park Commissioners" through him?

A. Yes, sir.

Q. How long have you been the attorney of Mr. Kerr, assuming you mean W. P. Kerr?

A. Yes, W. P. Kerr. I have been his attorney from the time Kerr was out here. I should think at least six months prior to that he spoke to me to assist Judge Dunlevy and subsequently wrote me on the subject.

Q. How long before this transaction was that?

A. I could not fix the time definitely, but it was at least six months and it might have been a year before.

Q. Who was at the bank at the time you went there when your note was given?

328 A. Parties were coming and going at the bank. Mr. Bradley was there part of the time. I think Mr. Nash was there, who drew the checks, and my impression is Mr. Snider was there more or less. I am positive Mr. Bradley was there; he had been seen before, and I understood had seen Mr. Walch on the subject. Mr. Thompson was there, and I thought Mr. Morgan was there, but I would not be positive.

Q. Was there any one of the park commissioners there except Mr. Morgan?

A. No other of the park commissioners that I saw there at the time I was there.

Q. This deed, I understand you to say, was given subject to a mortgage?

A. I do not think the deed itself expresses that, but I think that was the legal effect of it. It was understood the sale was made subject to the incumbrance.

Q. What was the incumbrance; who had put the incumbrance on the interest?

A. It is in the record; the mortgage is an exhibit to the bill. It is the same mortgage; my impression is Mr. and Mrs. Dobbins made it.

Q. Do you know whether the mortgage was procured at the same time?

A. procured from whom?

Q. Whoever held it.

A. I know nothing from my own knowledge about that except perhaps what would be hearsay and secondary evidence. Kerr was understood to have held the mortgage at one time, and it was a matter of hearsay that the bank had advanced money on it, or the park commissioners advanced money on it. This is all a matter of hearsay and I do not konw of my own knowledge anything about it?

Q. You had nothing to do with it?

A. With what?

Q. With the mortgage.

A. Its execution? No, sir.

Q. Did you have anything to do with getting it up?

A. I do not think it was got up.

329 Q. Did you have anything to do with the mortgage in any way, shape, or manner?

A. I had the notes in my hand at one time for negotiation trying to sell them, but nothing was done; and they were returned to Kerr or Judge Dunlevy. I knew there was a mortgage; knew of the notes.

Q. Did you know that the bank had the notes and mortgage at the time you gave your note?

A. No, sir; I did not; I knew nothing of it, except what I was told.

Q. Had you anything to do with the negotiations with the park commissioners?

A. In regard to what?

Q. In regard to getting up the Dobbins title.

A. Well, I cannot say I had directly, and yet I had a general knowledge of the contract that was understood to be agreed to by a majority of the park board.

Q. Had you participated in the preparation of the contract?

A. No, sir; I had not. I think I had seen a draft of it.

Q. About when, do you think?

A. Some time prior to the time I executed my note. That was one of the inducements to my executing the note. I had no doubt there was an arrangement agreed to, and supposed it would be carried out.

Q. Had you participated in any way in the negotiations which were represented by the agreement to which you allude?

A. I cannot say I had, and yet Judge Dunlevy's office was next to mine and we talked about it.

Q. I meant to inquire whether you were active as between

330 the park commissioners and Kerr, or participated in it in that way.

A. I never was before the park board as a board on the subject.

Q. Ever before the park commissioners individually?

A. I was not.

Adjourned to 10.30 o'clock, Jan'y 25th, a. m.

JOHN I. BENNETT.

Subscribed and sworn to before me.

H. W. BISHOP,

Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

331 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS, Complainant,
vs.
JAMES MORGAN *et als.*, Defendants. } Cross-bill.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday the 24th day of January, A. D. 1882.

Present: Mr. Fuller, for complainant; Mr. Leaming, for defendant Morgan; Mr. Bennett, for defendant Bennett.

FRANK I. BENNETT, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. J. I. Bennett, and deposes and says as follows:

Q. State your name and whether you are a party to this suit.
A. Frank I. Bennett. I am a party to this suit.
Q. Are you the same person who has filed a disclaimer here?
A. Yes, sir.
Q. State what, if anything, you have had to do with the fractional south half of section 13, 38, 14, in relation to the conveyance mentioned in the bill.
A. About the 25th day of February, 1880, Judge Dunlevy came to me and stated that he had put in my name at the assignee's sale of the estate of Thomas S. Dobbins — his undivided one-fourth interest in the south fractional half of section 13, 38, 14, and about that time a deed was presented to me purporting to be the deed
332 from Mr. Jenkins, the assignee. Judge Dunlevy then requested me to convey the property to Fred. A. Ingals, which I did, as I recollect, on the same day. That was all I had to do with the matter.

Cross-examination by Mr. FULLER:

Q. This sale had taken place before Judge Dunlevy spoke to you, had it?
A. That is my impression as I recollect it now. He may have spoken to me before, as we were in the same office; but I don't recollect positively as to that. He requested my name to be used in several matters not connected with this, but I could not state positively as to this transaction whether he asked me before.
Q. How long had Judge Dunlevy been in your office?
A. He had an office next to ours for two years, I think.

FRANK I. BENNETT.

Subscribed and sworn to before me.

H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

333 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS, Complainant,
vs.
JAMES MORGAN *et als.*, Defendants. } Cross-bill.

Testimony taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 25th day of January, A. D. 1882.

Present: Mr. Fuller, for complainant; Mr. Leaming, for defendant Morgan; Mr. Bennett, for defendant Bennett.

WILLIAM H. BRADLEY, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Bennett, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

A. My name is William H. Bradley.

Q. State whether you had any official connection with the National Bank of Illinois in November, 1879?

A. I was acting as vice-president of the National Bank of Illinois in 1879.

Q. State whether you had any knowledge of a transaction made with the bank on or about November 14, 1879, in which John I. Bennett executed a note payable to the bank for $21,000, a copy of which is appended to complainant's bill of complaint, marked Exhibit E, and which I now show you.

334 A. I remember of the discount of a note of that character made by the bank at that time, either that day or the day following. It was about the middle of November, 1879.

Q. State, if you please, the circumstances under which the note was executed, the object of its execution, and at whose instance; state fully, without any further interrogatories, all that occurred in that connection.

A. I recollect of meeting Mr. Bennett, Mr. Dunlevy, and, I think, Col. Thompson at that time. I am not sure whether Mr. Bennett was there, but he was there at one time connected with the loan. Sometime in May, 1879, perhaps, the bank officers were requested to discount paper to the amount of $60,000. The parties making the request stated that it was in the interest of the park board with reference to a purchase they were about making, or had contracted to make, of certain parties, and it was desirable that the money should be advanced before the park commissioners could draw it, for some reason, before they could draw it from their funds. I do not think I could state all the reasons that were given. The bank simply wanted to know if it was a *bona fide* transaction on the part of the park commissioners. Mr. Morgan, Mr. Walch, and Mr. Cornell, as well as the solicitor, not, perhaps, altogether, but at different times, conferred with us at the bank, with Capt. Snyder and myself, and satisfied us that it was a *bona fide* matter in the interest of the park and park board, and with the assurance from all those gentlemen that it was legitimately for the Park, we told them we

would let them have the money—we would make the discount.
335 The discount was made on names that would not have been taken by the bank for anything, unless it had been backed up by the park commissioners—that is, the $60,000. $60,000 was loaned in that way. Then in November there was another sum wanted substantially for the same purpose, I think growing out of the same transaction connected with the Dunlevy-Kerr tract of land. They wanted $21,000, and that sum was loaned on the note of Mr. Bennett, with the same assurance from the park commissioners. We were assured we had a majority of the park commissioners, not technically bound by written obligation, but as a matter of honor, and a declaratiou that it was all right and that it was for their interest, and the $21,000 was discounted. In about ten days the two notes were taken up by a check of the park board and paid on the 24th of November, 1879.

Q. Have you caused any examination to be made for the original checks which were drawn at the time that note was executed, if any were drawn? And, if so, state with what result.

A. I have not, for the reason that the checks are all monthly surrendered to the park board—checks in which they are interested.

Q. Do you remember for what special object the funds were to be used which were given to Mr. Bennett for that note?

A. No, sir; I could not state specifically, because I was not interested. It was to accommodate the park commissioners; that was the only point that I interested myself about.

Cross-examination by Mr. FULLER:

Q. Did the park commission have its deposit account with the National Bank of Illinois?

336 A. Through its treasurer, it had. Mr. Snyder was the treasurer of the board, and of course the account was kept there.

Q. He was president of the bank?

A. Yes, sir.

Q. Can you remember what Mr. Walsh stated in relation to why they wanted the money?

A. I cannot state specifically what any one of them said, but I can state positively that the discounts would not have been made, except at Mr. Walsh's request and with his approval. He was a friend of the bank and in the park board, and we wanted to be satisfied on that point.

Q. You had no information as to what particular title or interest they were endeavoring to acquire, I suppose?

A. Not at all; none whatever. There was some collateral security left by Mr. Bennett when he made this loan. I may be mistaken about this loan, but there was some collateral security in one of these loans. I have not examined it to see, and, perhaps, it was the first loan.

Q. But I understood you to say you did not pay much attention to the collaterals, regarding it as all one transaction?

A. I did not pay much attention to the collaterals.

Q. You were resting on the conviction that it was a park transaction, which the park would attend to?

A. Yes, sir.

Q. You say that the checks of the park board were returned to them monthly?

A. Yes, sir.

Q. Have you any of the checks on which the funds were paid out after the discounts?

A. I have not looked for them at all; I never saw them.

Q. The checks of the park board would be, of course, the
337 checks that took the loans up, but what I would like to get at is how the checks ran that paid out the proceeds of the discount?

A. It could easily be ascertained. I could easily find out.

Q. Will you have the kindness to do so?

A. I will.

Cross-examination by Mr. LEAMING:

Q. What relation had Mr. John R. Walsh borne to the National Bank of Illinois prior to this date?

A. Mr. Walsh for several years was a director of the bank.

Q. When Mr. Walsh first applied to you in reference to this transaction of which you have testified, do you remember his saying to you that some agreement or contract had been arrived at between the park and Mr. Kerr, through Mr. Dunlevy, whereby the matter would be adjusted, and that for some reason they desired not to publish the matter for a short period, and desired the advance of this money so that the matter need not be made public through the meeting of the board, but that they would like an accommodation from the bank, and would take care of it, or anything of that character?

Objected to as leading by Mr. Fuller.

A. I understood that substantially from all of them that there had been an agreement which, for some reason, they were not quite prepared to consummate with reference to the purchase of land for the park.

Q. Do you not remember that reason was assigned that they did not desire to take public action on it as yet?

Objected to as leading by Mr. Fuller.

A. I am not sure what the reasons were. That did not impress me very strongly or decidedly. The only thing that I remember clearly that impressed itself on my mind is that the park commissioners had made an agreement, or some arrangement, which,
338 for some reason, they were not prepared fully to consummate, and it would be considered a convenience and an accommodation to them if this money could be raised without their directly advancing it at that time. I think that is as far as I understood.

Q. Do you remember what securities were deposited?

A. I do not, except in a general way, the notes of Dobbins, which,

I think, have been secured by a mortgage or trust deed for quite the amount; I could not state definitely. My attention has not been called to it from that time to this, but I recollect there were notes of Dobbins for a large amount.

Adjourned to 2 o'clock p. m. Jan'y 25.

339 Mr. BRADLEY.

Mr. FULLER: Did you examine into the matter of the checks at the bank to which you have referred in your testimony?

A. Yes.

Q. What did you find from the books of the bank as to the first loan, to whom it was paid, and the amount?

A. I find the proceeds of the first loan was divided into two, half in the name of Nixon and half in the name of Curry, the proceeds of which amount, $59,900, was passed to the credit of J. C. Dunlevy, May 17, 1879.

Q. What was the date of the Bennett transaction?

A. November 14, 1879; there was a loan made of $21,000, and the proceeds of that were included in a certificate of deposit given to Mr. Bennett.

340–341 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMM'RS, Complainant,

vs.

JAMES MORGAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday the 30th day of January, A. D. 1882.

Present: Mr. Fuller, for complainant; Mr. Leaming, for defenant.

H. W. HARMON, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Fuller, and doposes and says as follows:

Q. State your name and occupation.

A. H. W. Harmon; secretary of South Park Commission.

Q. How long have you been secretary?

A. Since 1873; either secretary or assistant secretary.

Q. Have you got certain warrants referred to in evidence in this case, one for $82,800 and one for $7,200. If so, please produce them.

A. I have them here.

342 Q. Please read the one for $82,800.

A. It is as follows:

No. 4782. OFFICE OF SOUTH PARK COMMISSION,
67 DEARBORN STREET,
$82,800. CHICAGO, *November 22d*, 1879.

Pay National Bank of Illinois, or order, $82,800, for acc. of land.

H. W. HARMON,
Secretary.

To George Schneider, treasurer South Park Commissioners.
Countersigned and registered.

C. P. RICE, *Auditor.*

There is indorsed on the face: Paid National Bank of Illinois, November 24th, 1879. On the back: Pay the within to order of payee, and charge same to my order. George Schneider, treasurer South Park Commission.

Read the other draft.

No. 5035. OFFICE OF THE SOUTH PARK COMMISSIONERS,
67 DEARBORN STREET,
$7,200. CHICAGO, *February 26*, 1880.

Pay James Morgan, pres., as per resolution Nov. 21, 1879, or order seventy-two hundred dollars for acc. securities on land south half fractional sec. 13 & 38, R. 14.

H. W. HARMON,
Secretary.

To George Schneider, treasurer South Park Commissioners.
Countersigned and registered.

343 C. PRICE, *Auditor.*

On the back is the following: "National Bank of Illinois: Pay the within to the order of payee and charge same to my account." George Schneider, treasurer South Park Commissioners. There is also indorsed on the back: "Pay to order of J. C. Dunlevy acct. securities on acct. of deeds from assignee and receiver, R. E. Jenkins." From the word acc. it has been erased to the word "deeds." It is in brackets. James Morgan, pres. Jno. C. Dunlevy.

Q. Read the indorsement omitting the words erased.

A. Pay to order of J. C. Dunlevy, deeds from assignee and receiver, R. E. Jenkins. James Morgan, prest.

Q. Read the words that are erased.

A. "Acct. securities on," and then the word "acc."

Q. In what way is it done?

A. With a leadpencil mark drawn through them.

Q. In whose handwriting is the indorsement "James Morgan" on the back of the second warrant?

A. James Morgan's, formerly president of the South Park
344 Commission.

Q. Are you familiar with his handwriting? Do you know it?

A. Yes.

Q. In whose handwriting are the terms of the indorsement?

A. I couldn't say positively as to that, but it looks like Col. Thompson's to me.

Mr. THOMPSON: It is my writing.

Q. Some evidence has been given in relation to an alleged agreement signed by William P. Kerr, by J. C. Dunlevy, on one side, and South Park Commissioners, by R. S. Thompson, its agent, on the other, respecting copies, as I remember it, of that agreement. Have you found any data in the South Park office by which it can be fixed when such a contract was copied or printed, if at all?

A. I have a bill here from S. W. Burnham—5 copies of that agreement dated February 24; the bill was paid in the June following.

Q. In what year?

A. 1880.

Q. Do you know what that bill relates to?

A. The bill relates to copies of the contract you speak of.

Q. Read the bill in full.

A. "South Park Commissioners to S. W. Burnham, February 24, to five copies of agreement, $10 & C. Received payment, S. W. Burnham," and endorsed: "These copies were ordered by Commissioner R. S. Thompson."

345 Q. The bill does not have the year upon it?

A. No, sir.

Q. Are you sure in relation to the year?

A. Yes, I am positive as to that.

Q. Have you any tracts in the South Park Commissioners' office that would show the dimensions of the tract in controversy in this case?

A. I think there is a map of the East Park in the office, made by Olmstead & Vaux, whether it says the exact proportion of that tract described; I don't know. There may have been other plats taken, but I have set the boys to work to look through the vaults and see if they can find anything of that kind. If I can find anything I will have it by to-morrow.

Q. You understand the controversy is over what is known as the Phillips tract?

A. Yes.

Q. I should think if this map did not show the acres as to this tract separately, that a surveyor could take it from the map itself and figure it out?

Mr. FULLER: Complainant reserves the right to recall the witness in relation to the plats spoken of.

Cross-examination by Mr. LEAMING:

Q. Will you read the indorsement signed by James Morgan, on $7,200 warrant, without reference to any attempted erasure?

346 A. "Pay to order of J. C. Dunleavy, acct. securities on acc. deeds, from assignee and receiver, R. E. Jenkins. James Morgan, prest."

Q. Now, will you state which of those words appear to be stricken out?

A. The words "accts. securities on" are stricken out by leadpencil mark drawn through them.

Q. Do you know whether that leadpencil mark was drawn through these words you have designated at the time that was returned to the commissioners' office, or subsequently?

A. That I don't know. I never picked up that warrant since, until to-day, excepting when it came back from the bank with other warrants.

Mr. FULLER: Is the word "acct.," immediately preceding the word deeds in the endorsement, stricken out in ink or pencil?

A. That is ink.

Q. Is the name John C. Dunlevy in Dunlevy's handwriting—do you know his handwriting?

A. Yes; I should say that was Dunlevy's handwriting.

H. W. HANNON.

Subscribed and sworn to before me.

H. W. BISHOP,
Master in Chancery.

347 No. 4782.

Office of the South Park Commissioners, 67 Dearborn street.

$82,800. CHICAGO, *Nov.* 22, 1879.

Pay National Bank of Illinois, or order, eighty-two thousand eight hundred dollars for ac. of land.

H. W. HARMON, *Secretary.*

To Geo. F. Schneider, treasurer South Park Commissioners.

Countersigned and registered.

C. PRICE, *Auditor.*

[National Bank [of] Illinois. Paid.]

No. 5035.

Office of the South Park Commissioners, 67 Dearborn street.

$7,200. CHICAGO, 2–26, 1880.

Pay James Morgan, pres., as per res. Nov. 21, '79, seventy-two hundred dollars, for ac. securities on land, S. ½ fr'l sec. 13, & 14, R. 14.

H. W. HARMON,
A. Secretary.

To Geo. F. Schneider, treasurer South Park Commissioners.

[National Bank of Illinois. Paid.]

Countersigned & registered.

C. PRICE, *Auditor.*

348 National Bank of Illinois, pay the within to order of payee, and charge same to my account.

GEO. SCHNEIDER,
Treasurer South Park Commission.

Pay to order of J. C. Dunlevy [acct. securites on] ([acc.] deeds from assignee and receiver, R. E. Jenkins).

JAMES MORGAN, *Pres't.*

JNO. C. DUNLEVY.

[NOTE.—Words in brackets erased with pencil; word in brackets erased with ink.]

Pay the within to order of payee, and charge same to my account.

GEO. SCHNEIDER,
Treasurer South Park Commission.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSION, Complainant,
vs.
JAMES MORGAN *et al.*, Defendants.

349 Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 30th day of January, A. D. 1882.

Present: Mr. Fuller, for complainant; Mr. Leaming, for defendant.

S. W. BURNHAM, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. FULLER, and deposes and says as follows:

Q. State your name, in what occupation you are engaged, and for how long.

A. S. W. Burnham, shorthand writer and law reporter for the last dozen or fifteen years in Chicago.

Q. Did you make any copies of an alleged contract, referred to in the evidence in this case, in relation to what is known as the Phillips tract?

A. I copied or had copied on the type-writer the paper referred to.

Q. When was that done?

A. As appears by the books, February 20, 1880.

Q. Who did you do it for?

A. Col. Thompson.

Q. Examine the bill referred to by the witness Harmon, and state whether that is the bill rendered for the copies in question?

A. It is.

Q. You say as appears by the books—to what do you refer; to your books?

350 A. Yes, sir; this entry was made at the time, and is the correct date on which the work was done.

S. W. BURNHAM.

Subscribed and sworn to before me.

H. W. BISHOP,
Master in Chancery.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSION, Complainant,

vs.

JAMES MORGAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Tuesday, the 31st day of January, A. D. 1882.

Present: Mr. Booth, representing Mr. Fuller, for complainant.

ROB'T E. JENKINS, a witness on behalf the complainant, being first duly sworn, was examined in chief by Mr. BOOTH, and deposes and says as follows:

Q. State your name, age, and occupation.

A. My name is Robert E. Jenkins; age, 36 years; residence, Chicago; occupation, lawyer.

351 Q. State if on February 17th, 1880, you as receiver in the case of Hunt *vs.* Dobbins and others, in the United States circuit court, made a deed to Fred. A. Ingals of property in the south half of fractional section 13, 38, 14, in Cook county, Illinois.

A. I cannot say as to the date, as I have not got it before me. I sold, as receiver in that case, pursuant to an order of court, the property mentioned and made a deed. I have not the deed before me, and cannot say as to the date.

Q. You sold the interest of Thomas S. Dobbins?

A. Yes, sir.

Q. State what consideration you received for making that deed.

A. The sum of $50, the amount bid at the receiver's sale.

Q. State if, as assignee in bankruptcy of Thomas S. Dobbins, you made a deed of the same property to Frank I Bennett.

Q. I sold the same property as assignee, or my interest as assignee of Thomas S. Dobbins, on the 20th of November, 1879, and made a deed soon after to Frank I Bennett conveying the interest to Thomas S. Dobbins and mine, as his assignee in bankruptcy, to the property.

Q. State the consideration.

A. The sum of $50, the amount bid at the sale.

Q. Do you know who paid it?

A. My recollection is Judge Dunlevy handed me the
352 money, but I cannot state positively.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSION, Complainant,

vs.

JAMES MORGAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 8th day of February, A. D. 1882.

Present: M. W. Fuller, for complainant; J. Leaming, J. C. Dunlevy, for defendant Morgan.

H. W. HARMON, a witness on behalf of the complainant, being first duly sworn, was further examined in chief by Mr. Fuller, and deposes and says as follows:

Q. Have you the papers mentioned in the receipt given to Mr. Morgan in April, 1880?

A. Yes, sir.

Q. Will you please produce them and enumerate them?

A. Here, in the first place, is a promissory note for $30,325,
353 dated May 14, 1879, signed Wilson K. Nixon, payable to the National Bank of Illinois.

Q. What time?

A. 60 days after date. The next is a promissory note, dated November 26, 1872, for $25,000, bearing interest at the rate of 8 per cent. per annum from December 1st, 1872, signed by T. S. Dobbins.

Q. Now, if there are any indorsements on the back you can read them.

A. The payment of interest being indorsed on said note to June, 1874, the said note being held as collateral security to the above-described note of $30,325. The next is a trust deed from Daniel P. Rhodes to Daniel Jones on the undivided one-fourth part of the south half of fractional section 13, town 38, range 14 east, save and except therefrom the north one-third of lot 3 and lots 9, 10, and 11 and 15 and 16 in Phillips' subdivision of the west part of said half section.

Q. Give the date of that trust deed.

A. Dated November 26, 1872.

Q. What is it given to secure?

A. Being the same interest conveyed by said Kerr to said Rhodes by deed of date October 12, 1872, and for part payment of which said notes were given.

Q. What notes?

A. Said notes that T. S. Dobbins has executed; two promissory notes dated of even date herewith, payable to his order on or
354 before June 1st, 1874, said notes being for the sum of $25,000 each, bearing 8 per cent. interest, payable semi-annually on the first days of June and December in each year, and due in two years from June 1st, 1872, at the banking house of Tyler, Wrenn & Co., Chicago. The next is a note for $30,225, dated, May 15, 1879, payable 60 days after date, and signed Lewellyn Curry.

Q. Does that refer to any note as collateral?

A. There is a note attached to it as collateral security for $25,000.

Q. State whether the note of Curry does describe the note as collateral.

A. Yes.

Q. In what language?

A. One note $25,000, dated Chicago, November 26th, 1872, made by T. S. Dobbins, payable to his own order on or before June 1st, 1874, at the banking-house of Tyler, Wrenn & Co., with 8 per cent. interest, and by said Dobbins indorsed in blank, with interest indorsed paid to June, 1874; said notes being secured by trust deed on the undivided one-fourth of the south half of section 13, made by Daniel P. Rhodes to Daniel Jones.

Q. Does it give the date of the trust deed?

A. No.

Q. Is the note referred to as collateral attached to the Curry note?

A. Attached to the Curry note is a note for $25,000, dated Chicago, November 26th, 1872. On or before the 1st day of June, 1874,

355 I promise to pay to the order of myself $25,000, with 8 per cent. interest from December 1st next, payable semi-annually on the first day — December and June in each year, at the banking-house of Tyler, Wrenn & Co. Value received. T. S. Dobbins. Indorsed on the back is "Received interest to June, 1874."

Q. You have identified the trust deed from Daniel P. Rhodes to Jones and John B. Drake as successor in trust?

A. Yes, sir; the next is a note for $21,000, dated November 14, 1879, made payable on demand at the National Bank of Illinois, and signed John I. Bennett.

Q. What is there attached to it?

A. A note dated February 26th, 1880, for $7,200 on demand, payable at the National Bank of Illinois, and signed Lewellyn Curry; in addition to this, there is a declaration of trust by Fred. A. Ingals.

Q. These are the original papers handed to you by Mr. Morgan at the time of the receipt?

A. Yes.

Q. Examine the original receipt in the possession of Mr. Morgan and state in whose handwriting it is.

A. It is my handwriting.

Q. Was Mr. Morgan present when it was made out?

A. Yes.

Q. Was it made out at his suggestion?

A. Mr. Morgan dictated the receipt to me, and I read it and signed it.

356 Q. Have you searched in the files and papers of the South Park Commission and at their office in the city for plats or surveys of the tract in controversy in this suit?

A. Yes; I have gone through everything in the city office.

Q. What plat did you find, or map, that existed in 1870, of the premises in controversy, and made by whom?

A. I find in the possession of the engineer a map from an original drawing of Olmstead & Vaux, what is called a working plan of the park.

Q. What is the name of the engineer?
A. Our present engineer?
Q. Yes.
A. J. F. Foster.
Q. Is the plat of which you speak in his possession?
A. It is in his possession.
Q. You are the secretary of the South Park Commission and have been for several years?
A. Yes, sir.
Q. Have you examined the records of that corporation from the first of January, 1879, into March, 1880, at my request?
A. Yes.
Q. Do you find anywhere the record of any order in reference to an alleged contract between W. P Kerr on the one side and the South Park Commission on the other side?
A. No, sir; I find nothing.
357 Q. There is no record you can find that any such contract was ever brought before the board?
A. No matter standing of record.
Q. Can you state during what period of time Mr. Thompson was attorney of the board?
A. My recollection is he was attorney from 1877 to 1880; it might have been 1878 to 1880.
Q. What time in 1880 did he cease to be such?
[A] ——.

Cross-examination by Mr. LEAMING:

Q. During the time that R. S. Thompson was attorney of the commission was there any other attorney of the commission?
A. Yes, sir; Mr. Kales.
Q. Was Mr. Kales a regularly appointed attorney of the commission?
A. My recollection is he was.
Q. Who else acted as attorney of the commission during that time?
A. As regularly appointed attorney?
Q. Who else acted for the commission as attorney?
A. In different matters, do you mean?
Q. Yes.
A. Mr. Jewett was an attorney, and my recollection is Mr. James P. Root, and I think Mr. Fuller was attorney and Lyman Trumbull.
Q. Who had charge for the commission of what was known as the Kerr & Phillips litigation?
A. That was in Mr. Kales' charge.
358 Q. Was Mr. Fuller connected with that litigation?
A. Yes.
Q. Have these securities that you have specified been in the hands of the commission ever since they were delivered to it by Mr. Morgan?
A. You mean in my charge solely?

Q. In your charge solely.
A. They have been in the hands of the attorneys of the commission.
Q. What attorney?
A. Mr. Bonfield; he was attorney at one time.
Q. Did he have them?
A. Yes.
Q. Did you take a receipt from Mr. Bonfield when you delivered them to him?
A. I did.
Q. Look at this paper and state what it is.
A. A receipt Mr. Bonfield gave for these papers.
Q. What else is that paper?
A. It is a copy originally made by me of the original I made to Mr. Morgan.
Q. Did you hand those securities to Mr. Bonfield?
A. I gave them to Mr. Bonfield.
Q. Did you, at the same time, give Mr. Bonfield this receipt?
A. He gave that receipt to me.
Q. He saw that receipt?
A. Yes, sir.
Q. Did he sign it?
A. Yes; when he returned the securities I scratched out his signature.
359 Q. Is that receipt a copy of the receipt given to Mr. Morgan?
A. It was intended to be an exact copy.
Q. The leadpencil memorandum at the bottom of it, was that on it at the time you gave it to Mr. Bonfield?
A. Yes, sir.
Q. Is that the same memorandum that is in leadpencil on the original receipt?
A. It is intended to be; it is the same memorandum.
Q. Were you present at the commission at a meeting of the Board of the South Park Commission held on the 21st of November, 1879?
A. A portion of the time.
Q. What portion of the time were you absent, if absent?
A. Nearly all the latter part of the meeting.
Q. What was being done before the members composing the board at the time you went out of the room in which they were meeting?
A. I will not say that was the meeting of November 21, 1879.
Q. At the meeting at which the resolution was passed concerning the $90,000?
A. At a meeting at which the resolution was passed for the $90,000, my recollection is I was present all the time at that meeting.
360 Q. Prior to the passage of the resolution did the members of the commission take any recess?
A. I don't recollect.
Q. During that day on which the resolution was passed with refer-

ence to the $90,000 was there presented at the office of the South Park Commission—was there presented in the presence of Commissioners Walsh, Sherman, Cornell, Morgan, and Price—a paper with reference to a proposed contract between Kerr and the commissioners?

A. I won't swear as to the date of it.

Q. At any day?

A. Yes, sir; there was such a paper presented; what day it was presented I cannot say.

Q. What took place at that time about that?

A. The paper was brought up, and Col. Thompson started to read the paper, and I thought it was a matter that did not concern me, and went out, and came in, perhaps, in 15 or 20 minutes afterwards. There was some discussion going on, and one of the commissioners—Mr. Price, my recollection is—requested the document to be printed, so they all could see what there was of it, as I recollect. I do not recollect exactly how it was done; I know there was no regular motion made, but it was concluded to have the document
361 printed, and each member have one, and after they had all seen it bring it up again. This was all informal, my recollection is.

Q. Are you positive as to the date when that thing occurred?

A. No, sir; I am not; I cannot say whether it was the 21st of November or the meeting after that.

Q. You are not positive whether it was on that day or a subsequent date?

A. No, sir.

Q. I will ask you how money belonging to the commission is paid out?

A. It is paid out by order of the board; the first step is an order of the board.

Q. What after that?

A. A warrant is drawn, signed by the secretary and countersigned by the auditor, drawn on the treasurer, who signs and indorses this warrant himself, and it is passed to whatever bank he may keep his account in, and paid by that bank.

Q. Is money ever drawn from the commission in any other way?

A. No, sir.

Q. By Mr. RAE: At the time of the board passing the order for the payment of this $90,000 what commissioners were present at that meeting?

A. My recollection is it was a full board—all five of them there; that is my recollection.

Q. Is there any record that would show?

362 A. The record would show, certainly, who was there?

Mr. DUNLEVY: How long have you been secretary of the Board of South Park Commissioners?

A. Since March, 1873, I think, with the exception of one year, in which I was assistant secretary.

Q. What year were you assistant secretary?

A. March, 1879, to March, 1880.

Q. Were you in the employ of the board from its organization?

A. No, sir; I have been employed by the board in one capacity and another since the spring of 1872.

Q. What was your connection with the board, your duty in the board before you became secretary or assistant secretary; were you book-keeper?

A. No, sir; I was employed on the assessment—collecting assessments.

Q. Have you been book-keeper of the board?

A. I am now; I have been keeping charge of the books for the last two years.

Q. In your connection with the board, either as book-keeper or employed on the assessment roll, or as secretary, or as assistant secretary, have you seen what purported to be a contract between Charles B. Phillips and the South Park Commissioners for this land?

A. No, sir; never.

Q. Has the board any claim upon the Phillips interest in
363 this land, that has come to your knowledge by reason of your position, that is a matter of record in your board?

A. They have a claim against what they call the Phillips tract; there is an account kept with the Phillips tract.

Q. What particular claims have the board against the Phillips interest?

A. For moneys advanced to Phillips and for all the expenses in the matter; everything in the account is charged up against the Phillips tract.

Q. Do the records of the board show what has been advanced on account of that tract?

A. Yes.

Q. Will you bring it in this afternoon?

A. Yes.

Q. Under what kind of an arrangement did this board advance money to Phillips?

A. That I don't know.

Q. Do the records show?

A. The records do not show.

Q. Does the account show what the money was given to Phillips for?

A. It does not; it simply says so much paid to C. B. Phillips.

Q. Does the account show against the Phillips tract any money paid different attorneys employed to litigate the title?

A. Yes.

Q. About what is the gross amount of that whole charge?
364 A. My recollection is it would be something over $40,000; everything that is charged to the Phillips account.

Q. You do not know why and under what kind of a contract or arrangement the Park Commissioners paid out that $40,000 or more to Phillips?

A. I do not.

Q. Do you know there was a litigation between the South Park Commissioners and Kerr with reference to this land?

A. Yes.

Q. Do you know of any efforts on the part of the South Park Commissioners, or any of them, to compromise that litigation?

A. Do you mean as a matter of record, or as a matter of hearsay?

Q. I did not ask for record; I asked you if you know?

A. Only by hearsay.

Q. Who did you hear speak of it?

A. Col. Thompson.

Q. Ever hear one of the Park Commissioners?

A. Yes; Mr. Morgan. He was a Park Commissioner at that time.

Q. Who else?

A. Paul Cornell.

Q. Ever hear Mr. Walsh speak of it?

A. No, sir.

Q. Ever hear Mr. Sherman speak of it?

A. No, sir.

Q. Ever hear Mr. Price speak of it?

A. Yes.

365 Q. So far as the commissioners expressed themselves, what did they say with reference to being desirous of compromising the litigation between Kerr an- the South Park Commissioners?

A. Mr. Morgan expressed himself very desirous in the matter. Mr. Price has talked so much about it that from what he said you could not tell whether he desired one thing or another. Mr. Cornell expressed himself as anxious to settle the matter.

Q. Did you hear Mr. Sherman express his opinion?

A. I said once I did not.

Q. Do you know, and, if so, will you state, whether you understood from a majority of the board that about May, 1879, general terms and conditions of compromise were agreed upon?

A. No, sir; I do not know that.

Q. Did you, in your position as secretary, have any knowledge of any arrangement made with the National Bank of Illinois about May, 1879?

A. No, sir; I was not secretary then.

Q. Did you hear any members of the park board speak of an arrangement to advance money?

A. No, sir.

Q. Was Mr. Schneider treasurer of the park board in May and June, 1879?

A. Yes, sir.

366 Q. Can you state about what amount of money he had in his possession at that time as treasurer of the South Park Board?

A. I do not recollect.

Q. Will the books show?

A. The books will show.

Q. Will you bring it in this afternoon or to-morrow?

A. Yes, sir.

Q. Did you have any conversation with Mr. Schneider, president of the Illinois National Bank and the treasurer of the South Park Board about taking up the notes of Curry & Nixon?

A. Yes, sir; I guess I did.

Q. State about when that was.

A. My recollection is that *is* about July, 1879.

Q. After the Curry and Nixon note became due?

A. I don't know when they became due; I paid no attention to it. I can repeat the conversation if you desire.

Q. Where was the conversation?

A. In the park office.

Q. Who was present besides yourself?

A. Nobody.

Q. Was that conversation had with Schneider as treasurer of the South Park Board or president of the Illinois National Bank?

A. I cannot state; I supposed it was in behalf of the bank;

367 my supposition would be he called on behalf of the bank.

Q. Do you remember whether he told you at that time the treasury of the park board had plenty of money to pay these notes of Nixon and Curry?

A. No, sir.

Q. Was any park commiissioner present when he talked with you?

A. I should say not.

Q. Give the conversation:

Objected to as incompetent.

A. Mr. Schneider came in with what purported to be these securities. I do not know they were these securities. He said, "When are you going to pay these securities?" I said to him I don't know.

Q. Did he show you any securities at the time?

A. He did not; he simply had a bundle in his hands.

Q. Did he tell you why he expected you to pay them?

A. He did not tell me why.

Q. You never heard of them before?

A. No; I had not heard of them before.

Q. You didn't know what the securities were?

A. I didn't know what the securities were.

Q. Didn't look at them?

A. Didn't look at them.

368 Q. What answer did you make?

A. I told him I didn't know.

Q. Did he say in that conversation the members of the board had promised to pay that?

A. He did not.

Q. Did he not represent to you in that conversation he had been assured by three members of the board, at least, that the park funds should be appropriated for that purpose?

A. He did not.

Q. Did you have any other talk with Schneider about it?

A. No, sir.

Q. Or with Mr. Nash, the cashier?

A. Yes. Nash came into the office once after that.

Q. He was the cashier of the Illinois Bank?

A. Of course, he came on behalf of the bank, as he had nothing to do with the commission. He made the same remark about these securities, and wanted to know when they would be paid. My remark to him was, I supposed the commissioners would pay them shortly.

Q. Why did you say so; you say you didn't know what the securities were?

A. I supposed if the commission owed anything they were able to pay it?

369 Q. Did you look to see whether they owed the bank?

A. I did not.

Q. You told him they would be paid shortly?

A. I suppose so.

Q. Why did you tell him so?

A. Because I supposed if they owed the bank, or made any agreement, they would pay it.

Q. You did not ask whether they had made an agreement?

A. I did not.

Q. You didn't know whether they had made any agreement to pay or not?

A. No, sir.

Q. Why did you suppose they would pay?

A. I told you once before I supposed if they owed anything they would pay it. I acted then as assistant secretary.

Q. What was your reply?

A. If the commission owed anything they would pay it.

Q. Pay what?

A. What he asked for. He claimed they owed a claim.

Q. You didn't know what it was?

A. No, sir.

Q. Hadn't heard any park commissioner speak of it?

A. No, sir.

Q. Did not know there was an agreement by individual member of the park board they would pay this debt?

370 A. No, sir; I did not know anything about it.

Q. Never had heard of it?

A. Never had heard of it.

Q. When did you first hear there was an arrangement on the part of some of the park commissioners to take up this matter at the bank; when did you first learn that from any member?

A. My recollection is, I heard that somewhere in October; say a month or six weeks before the resolution was passed; I heard it through Mr. Price; that is my recollection.

Q. Did he not tell you the individual members of the board were bound to pay that debt?

A. No, sir.

Q. Didn't he tell you he had himself gone to the bank and told the president it should be paid?

A. No, sir.
Q. What did he tell you?
A. He said there was an attempt to compromise the Dunlevy interest.
Q. Did he say money had been advanced for that purpose?
A. Not at that time.
Q. Did he tell you afterwards the money had been advanced or was to be advanced?
A. He told me after the passage of the resolution. At that time, my recollection is, he did not tell me.

371 Q. Didn't he tell you a majority of the board, five in number, were in favor of carrying out the compromise?
A. No, sir.
Q. What did he tell you about that?
A. My recollection is he said three members of the board.
Q. Did he mention names; what three?
A. If I recollect right, he said Cornell, Sherman, and Morgan. That is my recollection. I would not be positive that those three were endeavoring to compromise the Dunlevy interest.
Q. Give the whole conversation between you and Price.
A. I could not.
Q. Did he tell you they had incurred any money liability in consequence of the compromise?
A. No, sir; did not mention that.
Q. Was this after the $90,000 resolution had been passed or before?
A. When he first told me about attempts to compromise?
Q. Yes.
A. As I say, my recollection is it was before that resolution was passed.
Q. Did he tell you any money had been advanced?
A. Not at that time.
Q. When did he first tell you?
A. After the resolution had been passed.

Q. Was that before he signed the warrant?
372 A. Yes.
Q. He first refused to sign the warrant, didn't he?
A. No, sir; you couldn't say he declined to sign it; he didn't want to sign it.
Q. Did he know and say to you at the time that he signed that warrant for the purpose of advancing the compromise it was substantially agreed upon between Kerr and the South Park Commission?
A. My supposition would be he did.
Q. Did he not tell you that was what that money was for?

Objected to on the ground it is entering upon a subject the witness has not been examined about, and is not cross-examination, and therefore leading questions are inadmissible.

Q. You stated, at the time of signing of that warrant, Price said and knew that it was to carry out an arrangement and settlement

of the litigation between Kerr and the South Park Commissioners; didn't he tell you that?

Objected to on the ground above given, and because the witness has not been asked to state conversation, and is not and has not been permitted to.

A. No; he did not tell me that.

Q. State what he did tell you.

373 A. He told me he was going to pay for certain notes held by the National Bank of Illinois; this was to carry out an arrangement made at the bank by Commissioner Morgan and Col. Thompson; and that he was opposed to the whole thing, but as long as the board had passed the resolution, &c., he supposed he would have to sign the warrant; that is about the upshot of the whole thing.

Q. Are you sure he said the arrangement was made with the bank by Morgan and Thompson; didn't he say Mr. Walsh?

A. He might have said Mr. Walsh.

Q. Didn't he also mention Mr. Sherman's name?

A. I don't recollect he mentioned Sherman's name.

Q. Did you not understand from him it was to perfect and carry into effect the compromise that had been agreed upon between Kerr and the South Park Commission; was not that the object of appropriating the money, and didn't he so state at the time?

A. I can't exactly recollect what he did say; there is no doubt but what Mr. Price said in paying his money he was paying out this money on account of the arrangement made by Commissioners Morgan and Cornell and Col. Thompson, as he expressed it, at the bank of Illinois; what the arrangement was I could not state.

374 Q. Did he not say that arrangement — to compromise the litigation between Kerr and the South Park Commission?

A. No, sir: I don't think he ever stated that in such terms.

Q. Didn't the resolution passed in the board state that?

A. The resolution reads: "Appropriation of $90,000 for the purpose of acquiring the title?

Objected to having the resolution put in the answer of the witness.

A. I do not remember the resolution.

(The resolution was read by the witness.)

A. I do not see that relates to the word compromise.

Q. Don't it use the words "settle the litigation?"

Objected to on the ground that the counsel has no right to argue the case with the witness upon the construction of the resolution in question.

A. Settlement and adjustment are the words.

Q. Then when Price signed the warrant for the money you countersigned the warrant?

A. I signed it.

Q. Now, was not the purpose of the warrant to carry out the resolution to settle and adjust the litigation between Kerr and the South Park Commission?

Objected to on the same ground as before, and the further
375 ground that the question only states part of the resolution and omits the words "purchase of title."

A. The purchase of the warrant, as I understand it, was to follow out that resolution, both to settle and adjust and procure the title.

Q. When you signed this warrant for the $7,200 with Price, had he seen the contract with Kerr and the South Park Commissioners, signed by myself as Kerr's attorney and by Thomson as agent for the south park?

A. I never saw the contract.

Q. Have not seen it up to this day?

A. No, sir.

Q. You knew there was such a contract?

A. I will say I think I read printed in the newspapers what purported to be that contract.

Q. You have no other knowledge of it than what you got from the paper; did you state that?

A. No, sir; I said I had never seen the contract itself except what I saw in the papers.

Q. Do you know, as a matter of information, whether the contract between Kerr and Thompson was not read before all the members of the board in their office?

A. No, sir; I don't know that.

Q. Do you mean you did not see it done?

A. I never saw it done.

376 Q. Do you know it was not done—don't you know it was done?

A. No, sir.

Q. Did not the members of the board tell you so; didn't you learn it from them?

A. No, sir.

Q. Didn't Price tell you that contract had been laid before the board and he did not approve of it?

Objected to.

A. Yes, sir.

Q. Can you give the date of the meeting at which he made that statement to you?

A. No, sir; he probably made it to me a half a dozen times since February, 1880, the payment of the last warrant—February, 1880, I think it was.

Q. Can you state whether Price did not tell you at any time between November and February that the other members of the board agreed to the contract and he had defeated it?

A. I guess he said so.

Q. That he alone was responsible for defeating the carrying out of the compromise?

A. Yes, sir.

Q. All the other members were in favor of it but him?

A. Yes, sir; I heard him say that. I would not state that was between November and February.

Q. About that time?

Q. Along about that time?

377 Redirect examination by Mr FULLER:

Q. You say at the meeting to which you have referred, at which a paper was presented, purporting to be a contract, that you do not remember, or are not positive, whether it was on the 21st of November or a subsequent day; but, as I understand you, you say at that meeting, whenever it was, Price requested the document to be printed; is that so?

A. That is so.

Q. Then you say that the commission concluded to have it printed?

A. Yes, sir.

Q. Was it printed?

A. Yes, sir; it was printed.

Q. Do you mean by printing type-writing or how?

A. Type-writing.

Q. Now, if the copies were printed in February, 1880, would the fact assist your memory as to the time when the meeting must have transpired at which the alleged contract was presented?

A. I don't know whether that would.

Q. Can you recollect how long after the meeting at which the desire was expressed to have the contracts printed, and the conclusion arrived at that they should be, before it was that they were printed?

A. The bill, as I remember it, calls for the printing some
378 time in February; my recollection would be that the time the contract was presented would be perhaps two, three, or maybe four weeks after the first of November; that is my recollection.

Mr. RAE: Were not these to be printed to be brought up at the next meeting?

A. The idea was to have them printed, so each member could see one.

Q. By the next meeting?

A. Yes, sir; probably.

Q. Mr. FULLER: Your recollection of the time when the meeting transpired at which the alleged paper was presented is that it was subsequent to the 21st of November?

A. That is my recollection.

Q. How many weeks subsequent, do you think?

A. I should think, perhaps, it was two or three weeks subsequent; perhaps the next meeting after the 21st of November; that would be my recollection of it.

Q. That was the meeting when the printing of the alleged or proposed agreement was discussed?

A. Yes, sir; when it was proposed at that time when the contract was presented.

Q. What time was it that Price expressed his opposition to the measure, and asserted that his opposition defeated it?

A. I think after the last payment on the $90,000 was paid on the contract was the first time. Then my idea is that he ex-
379 pressed himself as having defeated the contract.

Cross-examination resumed by Mr. RAE:

Q. Col. Thompson has asked you if other attorneys were not employed in this case, and you mentioned Mr. Kales as one of the parties having charge of the litigation. Do you know or remember whether maps of this plat of ground were furnished to Col. Thompson about the time in the November of the year in which this transaction is said to have occurred?

A. I do not.

Q. Do you know of any map or surveys having been furnished to him?

A. I do not recall any.

Q. Did not Mr. Price say that the indefinite postponement of this contract by the park commissioners occurred from the fact of having it printed so Walsh and Sherman knew its true contents, and that as long as they knew what the contract was they refused to have anything to do with it?

A. No, sir; I never heard Price say that.

Q. Didn't he state to you that Morgan and Col. Thompson had charge of the matter, and that they had simply signed the contract because they were told it was all right without having themselves previously examined it?

A. No, sir.

Q. Never heard anything of that kind?

A. No, sir.

380 Q. Didn't he complain as to the drawing of the order for the $90,000 on account, that it was money merely paid to indemnify Mr. Morgan and some other of the park commissioners, in order to relieve them of personal liability to the bank on this Dobbins matter?

A. Never.

Q. Did he claim that it made them personally liable for that paper and they were getting out of it in this way?

A. No, sir.

Direct examination resumed:

Q. You have spoken of various attorneys; Mr. Jewett was employed in some of the cases, was he not?

A. He was employed in what was called the Colehour case.

Q. Trumbull and Fuller in the case of Kerr *vs.* Phillips and others?

A. Yes, sir.

Q. Was Root a general attorney in any way of the corporation?

A. Yes, sir; his business was in the tax matters, and also in the Colehour case and other business of the commission.

Q. In what respect did Col. Thompson act as attorney?

A. He was attorney in the Colehour case, and then, after Root resigned, Col. Thompson did the business Root had been in the habit of doing.

Q. What department was that?

381 A. Attending to the general law business of the commission, such as tax matters and assessment cases.

Q. From what time to what time?

A. My recollection of that would be from 1878 to 1880, two years.

Q. What position did Mr. Kales fill?

A. He carried on the Phillips litigation, and he had what was called the general and land attorney cases.

Cross-examination resumed:

By Mr. LEAMING: He was the general retained attorney, was he not?

A. Yes, sir.

Q. I understand you at the time, or about the time, that Mr. Price countersigned this warrant for $82,000 he had some conversations with you in reference to the matter?

A. Yes, sir.

Q. Now, at that time, didn't he have a conversation with you in reference to a proposed contract to which he was opposed?

A. Yes, sir.

Q. Did he ever show you what was given to him as a written copy of the contract?

A. No, sir.

Q. Did he say anything about having one?

A. My recollection is, he said he had seen the draft; what he called a rough draft of the contract.

382 Q. At that time?

A. Yes, sir; at that time.

Q. Didn't he tell you he had never seen or knew anything about the contract until it was brought up before the commissioners in the South Park office?

A. My recollection is he said so.

Q. Remembering those facts, do you still think that the meeting at which the contract was presented was as late as you have already stated, the resolution being dated on the 21st of November, and that warrant being dated a few days after?

A. I should say that meeting occurred after that resolution; that would be my recollection.

Q. And yet your recollection is that Mr. Price stated that he had never seen the contract, nor knew anything about it, until it was laid before the members of the board?

A. I heard him say that.

Mr. DUNLEVY: State whether on- of the reasons given by Mr. Price for opposing the contract was that he was a friend of Dobbins,

and Dobbins was not going to get enough money. Did he state anything of that kind?

A. I heard Mr. Price say that his friend Dobbins and, as he expressed it, Mrs. Dobbins was not going to get sufficient.

383 Q. Did he tell you in those conversations that he was going to protect Mr. or Mrs. Dobbins in their interest in this land?

A. No, sir.

Q. You said he was a friend of theirs and wanted them to get—

A. He said he was a friend of Mrs. Dobbins and didn't think this gave them enough; I never heard him say he was going to protect them.

Q. Didn't you understand from the conversations he was going to protect them.

A. No, sir.

Q. He said he thought under this arrangement she was not going to get enough for her interest?

A. Yes, sir.

Q. Did he give that as one of the reasons for holding this contract?

A. Yes, sir; I think he did.

Mr. FULLER: Have you stated all that he said?

A. About all I can recollect.

Q. Why do you say he gave it as one of the reasons; is it not better to state what he said?

A. He asked me the question, and my recollection is he gave that as the reason.

Q. Didn't he give it as a reason that the proposed contract was given to Mr. Kerr or Dunlevy what belonged to Mrs. Dobbins?

384 A. I stated that Mr. Price stated that he did not think that Mrs. Dobbins would get enough. I would not state he said so in so many words. He might have intended to convey that impression as well as the other. I heard him say a great many things.

Mr. RAE: Didn't he denounce the whole contract as being a fraud?

A. Yes, sir.

Q. Didn't he use very strong terms in denouncing the contract?

A. I heard him say he didn't like the contract, and was opposed to it.

Q. Didn't he denounce its terms as taking the matter out of the park commissioner's hands and putting it into private attorneys?

A. I have heard him state that.

Q. Didn't he say he was opposed to the park commissioners delegating their authority to Judge Dunlevy?

A. Yes, sir; I have heard him say that.

Q. Didn't he say he thought it was wrong that the power to compromise and settle that claim should be left in the hands of Judge Dunlevy and not in the hands of the park commissioners?

A. Yes, sir; I should say he said that, or very near to that.

Q. Didn't he say he was opposed to the contract giving Judge Dunlevy the power to employ just such counsel as he pleased

385 for the park commissioners in this litigation?

A. Yes, sir; he did.

Q. Did he say he was opposed to the contract as far as it authorized Judge Dunlevy to call upon the park commissioners to pay such funds and such moneys as might be necessary in the litigation, subject only to the approval of Col. Thompson?

A. I heard him state that.

Q. Didn't he state Col. Thompson and his partner, Mr. Leaming, had partly become the attorneys of Kerr and Dunlevy in the matter?

A. No, sir; I can't say I heard him say that.

Q. It has been asked you by Judge Dunlevy whether Mr. Price did not claim to be a friend of Mrs. Dobbins, and you say that is so, in reference to what he said about her not getting enough; didn't he refer to a foreclosure suit by Judge Dunlevy against Mrs. Dobbins, of which this is a part and parcel of the transaction, whereby she would not get her rights?

A. That I don't know.

Q. Did he say anything about Dunlevy trying to gobble up her rights by foreclosure or otherwise?

A. He mentioned incidentally *as* that he thought Judge Dunlevy was getting more out of Mrs. Dobbins than he ought to.

386 Q. Wasn't he opposed to the contract on the ground, also, of the park commissioners lending themselves to assist him?

A. I have heard him state that.

Mr. DUNLEVY: You understand Mr. Price was going to take care of Mrs. Dobbins' interest?

A. I don't know as I do understand that.

Q. What did he mean?

A. I could not tell what he meant; I was trying to give his conversation as near as I could.

Q. You have given your statement about this contract, will you state whether you did not get many of your ideas about it from an article published in the Times, in which this contract was published, and it was claimed the South Park Commissioners had given up control of the case to Dunlevy?

A. I have heard Mr. Price state it, as I recollect.

Q. You saw it in the Times, didn't you?

A. I don't recollect.

Q. Don't you know that was one of the complaints in the article, that the park commissioners were giving up control of the case to Dunlevy?

A. I don't remember that.

Q. Do you know who wrote that article?

A. No, sir.

387 H. W. HARMON.

Subscribed & sworn to before me, H. W. Bishop, master in chancery of the circuit court of the United States for the northern district of Illinois.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COM'S, Complainants,

vs.

JAMES MORGAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 8th day of February, A. D. 1882.

Present: Mr. Fuller for complainant, Mr. Leaming for defendant Morgan, Mr. Dunlevy for W. P. Kerr, Mr. Rae for Mrs. Phillips.

H. S. MONROE, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Fuller, and deposes and says as follows:

Q. Please state your name.
A. My name is Henry S. Monroe.
Q. How long have you resided in Chicago?
A. 10 odd years.
388 Q. Have you been a practising member of the bar during all that period?
A. I have.
Q. Are you acquainted with the tract of land in conrroversy in this suit, known as the Phillips tract?
A. Yes, sir.
A. State whether in the summer of 1879, or before or after that time, any effort was made to sell what was known as the Dobbins interest to the South Park Commissioners?
A. There was.
Q. By whom?
A. By myself, acting for Mrs. Dobbins.
Q. When should you say that was?
A. I have had several meetings with the park commissioners, or one or more of them at their office, prior to the time that Mrs. Dobbins finally sold out her interest. One of the interviews was a very short time before that; just how long I don't know. The deeds will fix the time that sale was made.
Q. These efforts were prior to that?
A. Yes, sir.
Q. What one of the commissioners did you see?
A. I saw Mr. Morgan and Mr. Cornell and Mr. Price, and I think I saw them all once or twice.
Q. Severally?
389 A. Mr. Sherman was there once. I saw two or more of them in the park commissioners' office.
Q. What was the situation of the Dobbins interest at the time?
A. Mrs. Dobbins, I think, claimed to own, subject to a mortgage, on what was called the Phillips tract, an undivided one-fourth.
Q. Was that interest conveyed to her by Rhodes?
A. Yes, sir.

Q. By William P. Kerr to Rhodes?

A. Yes, sir.

Q. Had Rhodes any interest in it himself?

A. Not that I have understood. Indeed I know he was a naked trustee.

Q. For Mrs. Dobbins?

A. Yes, sir.

Q. Upon what basis were these efforts made; that is to say, for what consideration; was there any offer made?

A. There were two or three offers made to sell this to the park commissioners and made in different ways, one or more offers being made subject to the mortgage, the park commissioners to take care of the mortgage, and one or more offers made me to take care of the mortgage.

Q. Can you recall the amounts to be paid?

A. I cannot now recall the exact amounts. There were so many things influencing my action, so far as Mrs. Dobbins is
390 concerned, I am unable to state the exact amount. There was one offer, the last one, shortly before we sold out, which, I think, is in writing; I think the park commissioners must have it. It was prepared as a last offer at Mr. Dobbins' house. Mr. Dobbins says that he has that memorandum in writing now. He could tell exactly what it was, but I am unable to state just the amount of that offer from memory.

Q. Can you give it in a general way, so as to give us some data?

A. I would rather you would get that memorandum, if it is material, than to try to fix the amount. The proposition, as I remember it now, covered two ideas; in the first place, I understood the park commissioners to concede that Mrs. Dobbins' interest covered one-fourth of the then Phillips tract. Mrs. Dobbins claimed, or I did for her, that it covered one-fourth of the number of acres that were in the Phillips tract at the time the deed from Kerr to Rhodes was given. There had been a large amount washed away, it was claimed, and I took the ground that they were entitled to that, to an undivided one-fourth of the original number of acres. There were two propositions made them, one on the one basis, and one on the other. I can only say this about the amount, that after it was understood that the park commissioners had bought, or some-
391 body had bought for them, when this contract was published in the papers, I then came to the conclusion the offer I made was a great deal better for the park commissioners than the one that appeared in the papers. That is the best I can say; the nearest I can come to it.

Q. Do you recollect when that publication was; it was some time after the date of Mrs. Dobbins' deed, wasn't it?

A. Yes, sir.

Q. Had a suit been brought in the name of Mr. Kerr against Mrs. Dobbins on the covenant in the Rhodes deed?

A. Yes, sir.

Q. What became of that?

A. I believe a judgment was recovered on that.

Q. Wasn't there a motion to set it aside?

A. There was an agreement at the time Mrs. Dobbins sold out that it should be set aside, and a stipulation to that effect was signed by Mr. Bennett, as the attorney of Kerr.

Q. That covenant was a covenant of assumption of the mortgage which secured Dobbins' two notes for $25,000 each, was it not?

A. I think it was, although I didn't know anything about that until after judgment was rendered, according to my recollection.

Q. Judgment by default?

A. I think so; I would not be certain about that.

392 Q. Didn't you come in and make a motion to set it aside?

A. Yes, sir.

Q. That was in the summer of 1879, wasn't it?

A. 1879 or 1880, I should say; 1879, I think.

Q. At the time these efforts were made was any information given you of any attempt at a contract between Kerr and the South Park Commissioners?

A. No, sir.

Q. Were you aware of any legal impediments to a sale to Mrs. Dobbins, subject to the incumbrance?

A. Not at all.

Q I will ask you to examine the papers in the law case of William P. Kerr *vs.* Mary C. Dobbins, general number 14884, circuit court of the United State, and state if those are the papers in the suit upon the covenant in question.

A. I think these are the papers; I guess there is not much doubt about that.

Q. By whom was the case brought?

A. The case was brought by Kerr against Mary C. Dobbins upon an assumption of this mortgage by Mrs. Dobbins in the deed from Rhodes to her.

Q. Please give the date of the deed.

A. If this is a correct copy, and I presume it is, it was made November 26th, 1872.

Q. You are looking now at what purports to be a copy of the deed annexed to the declaration in the case, are you not?

A. Yes, sir.

393 Q. When does that copy show the deed was recorded?

A. Filed for record April 6th, 1876.

Q. That was a covenant, was it not, of assumption of a mortgage or trust deed given by Rhodes to secure the notes of Thomas S. Dobbins?

A. Yes, sir.

Q. Notes of what dates and amounts?

A. My recollection is they were two $25,000 notes; when they were dated I don't remember, but the deed here contains this clause: "This covenant made expressly subject to a certain trust deed dated June 19th, 1872, executed by the said Daniel P. Rhodes, and one Daniel Jones, trustee, which said trust deed was made to secure two certain promissory notes for the sum of $25,000 each, coming due in one and two years respectively from June 1st, 1872, with interest at

8 per cent. per annum, payable semi-annually, which incumbrance that said party of the second part hereby assumes and agrees to pay, and to save said parties of the first part harmless herefrom."

Q. You find on examining these papers your recollection is refreshed in relation to the setting aside or attempt to set aside the judgment?

A. Yes, sir.

Q. You recollect whether the judgment ever was set aside?

A. I do not think it was.

Q. It still stands, so far as you know?

394 A. So far as I know.

Q. There is a stipulation here, filed July 9th, 1879, continuing the motion to set aside the judgment until the next term?

A. Yes, sir.

Q. Do you recollect that stipulation?

A. Yes, sir; it is in my handwriting.

Q. Were you aware of the purchase of Kerr at the time it was made, of this one-fourth interest of Kerr, originally—at the time Kerr conveyed to Rhodes were you aware of the fact?

A. Yes, sir.

Q. Do you remember what the actual consideration was?

A. I think it was $80,000; that is my recollection.

Q. $30,000 in cash and $50,000 in notes?

A. Yes, sir.

Cross-examination by Mr. DUNLEVY:

Q. State all the circumstances under which Mr. Dobbins bought an interest in this land of Mr. Kerr; give the whole history of the case, so far as you know, and your connection with it.

A. At the time I first heard of Mr. Dobbins in connection with this property——

Q. Give the dates.

A. I cannot give the dates; but it was not a great while, I should say, prior to the Rhodes deed. Judge Dunlevy spoke to me

395 about Dobbins buying a quarter interest in that property, and, I think, stated that he thought Dobbins would buy a quarter interest and would employ me in the case.

Q. As attorney for whom?

A. As attorney for him, or Mrs. Dobbins, or Rhodes, whoever took that title.

Q. The Kerr title?

A. Yes, sir; to aid in establishing the Kerr title as against the park commissioners; against Phillips and the park commissioners, too. The thing ran along not a very long time, when I understood that it was agreed that an undivided interest in this property should be conveyed to Mr. Rhodes. I don't know whether that was suggested by Judge Dunlevy or by Mr. Dobbins. My impression would be that it was suggested by Judge Dunlevy, so there would be no question of the United States court in the matter; but I would not be certain about that. I know the matter was talked of, and Mr. Dobbins, as an additional consideration, which I did not think of

when I was asked the question before, agreed to employ me and pay my fees to assist in the conduct of the litigation.

Q. What litigation?

A. The litigation against the Phillips title. It was arranged who the title should be made to. I did not see the money paid, and I did not see the deeds, as I recollect the first time it was done
396 and consummated in that way. I don't remember of seeing the deeds at all. I remember of talking with Mr. Dobbins several times about the title, and examining the title and telling him what I thought about it. I had examined it before that date.

Q. State whether you had ever seen Dobbins or knew him before that negotiation?

A. I think I knew him by sight; I think I had been introduced to him before, but had never met him in any business transaction.

Q. Did you know him personally at all then?

A. I think I did; I am not certain about it.

Q. What negotiations were there between Kerr and others for a sale of a quarter interest before Dobbins' name was mentioned between you and others and myself? What had Pullman to do with it?

A. You asked me, my impression is, to see Mr. Pullman and see whether he would not buy a quarter interest in the property, and I saw Mr. Pullman about it, and I think that while Pullman was talking about it you mentioned Mr. Dobbins.

Q. Wasn't it after Pullman had refused?

A. I don't know whether he had refused at that time or not; I don't remember that he had; I don't remember that he had given any definite decision.

397 Q. State if the negotiation with Pullman had gone through what interest you were to have in the purchase of this land, personally; suppose Pullman had taken that quarter interest under your representations, what proportion of that quarter were you to own yourself?

Objected to.

A. I do not think that was ever agreed to or understood.

Q. Did you talk with Pullman about buying this quarter interest before Dobbins bought it?

A. Yes, sir; two or three times.

Q. He agreed to take it, didn't he?

A. I don't know whether he did or not. I don't remember. I think Pullman was ready to do it, but I don't think it had come to that.

Q. Can you tell why he didn't do it?

A. I don't know, unless it was you preferred Dobbins. I don't remember why Pullman did not.

Q. You had a brother-in-law that interfered between you and Pullman and between me and Pullman in this transaction; what was his name?

A. I never heard of that before.

Q. What is the name of your brother-in-law?

A. I have got two brother-in-laws.
Q. Tell me all you have got.
A. I have got a brother-in-law by the name of Cole and one by the name of Dickinson.
Q. Have you got any other?
398 A. Not that I know of. My wife has a brother, Richard Mitchell.
Q. There is still another besides Mitchell?
A. I don't know of any more that ever lived here.
Q. You have got only three brothers-in law?
A. There is a man that married my wife's sister that lives in Monroe.
Q. What is his name?
A. Chamberlain.
Q. The fellow that was in the picture-frame business, who is now in London, what is his name?
A. He married my wife's sister; William J. Tewksbury.
Q. Then you have got four brothers-in-law, haven't you, instead of two?
A. I thought you referred to my brothers-in-law, not by marriage.
Q. I want you to tell here whether there has not been a sale negotiated with George M. Pullman of one-quarter interest in this property, and he backed out because your brother-in-law, Tewksbury, claimed a quarter interest in whatever purchase he might make.
A. Not that I know of.
Q. How did Dobbins come to buy a quarter interest in this property?
A. I don't know; you brought Dobbins to me about this matter the first — I saw him.
Q. Who did I tell you sent him?
A. I think you came with Dobbins.
399 Q. You had examined the title, hadn't you?
A. Yes, sir.
Q. You had examined it for Tewksbury and Pullman?
A. I didn't say I examined it for Tewksbury; I don't remember of Tewksbury having anything to do with the matter.
Q. Now, do you know why Pullman declined to take a quarter interest?
A. No, sir.
Q. Never heard?
A. No, sir.
Q. Where was your office when you examined the title to this property before you ever heard of Dobbins in connection with it?
A. I don't remember; I would say my office was at that time on Wabash avenue.
Q. Whereabouts?
A. Near Harmon court.
Q. Will you state, after negotiations with Pullman had failed to purchase a one-fourth interest of this tract, and failed by reason of

Tewksbury commencing these negotiations, that then Dobbins came and offered to buy it?

A. My recollection is not that way; my recollection is that, pending Pullman's consideration of the subject, that you suggested it might be doubtful whether Pullman's connection with the park commissioners was not too intimate, and you thought it would be better for Dobbins to buy the quarter, if he would take it, than to have Pullman do it; and, as I recollect it, you took up the matter with Dobbins then and started the arrangement with him. That is the way I recollect it.

400

Q. Did I give you any reason for Pullman's leaving the negotiation?

A. I don't remember that you did.

Q. Had you ever seen Dobbins before that time to speak with him? Where did you first meet with Dobbins?

A. I think I had met Dobbins before that, but, as I said before, in no way intimately. I would not swear I ever had any conversation with him before that.

Q. Didn't I have to employ you after — to examine this title, and — that Dobbins wanted to buy a quarter interest, and should not have it, unless he gave you a position in the trade?

A. I would not say you did not. There is a good many things that passed that I might forget.

Q. You had spent a good deal of time over this case, and you must have some of the profits; didn't I tell you so?

A. I wouldn't wonder if you did say if Dobbins took the title I should have some position in the case.

Q. What interest were you to have in the Pullman case?

A. The same interest; I should be employed in the case by Pullman to assist.

401

Q. What interest in the land?

A. No interest in the land.

Q. Any interest in the proceeds of the land?

A. I don't think it ever got to that extent with Pullman at all.

Q. Simply to have a fee?

A. I don't think the details of what I was going to have was ever settled between me and Mr. Pullman.

Q. Between you and Mr. Dobbins?

A. Yes, sir; I think it was.

Q. Didn't I insist that Dobbins should not have that interest without he took good care of you and gave you the same position you were to have with reference to Pullman?

A. I don't know but that you did.

Q. You did examine the title?

A. Yes, sir.

Q. And you were entitled to some money?

A. I had examined the title.

Q. Did I not refuse, as Kerr's agent, to make any contract with Dobbins, unless he would take care of you?

A. I don't know but that you did. I don't remember that.

Q. What interest did I require of Dobbins to make with you before I would make any contract with him?

A. I don't know what interest you required of him, at all.

Q. You don't remember anything about it?

402 A. Yes, sir; I remember about it, but I don't remember whether you required it or whether it was a matter of negotiation.

Q. What interest did you get in the negotiation with Dobbins; what was your interest originally, and what did you get?

A. I have forgotten what the original agreement was; I ultimately got for all my services, $4,000.

Q. You had paid out part of the purchase-money to Kerr of the Dobbins' interest?

A. I paid some money; I have forgotten how much.

Q. You paid it to Kerr?

A. Yes, sir; some interest; I paid some of the interest after Dobbins got into trouble; I have forgotten how much.

Q. You and Dobbins were purchasers of Kerr, were you not, of this quarter interest?

A. I never regarded it that way; I regarded what I was to have was for my services in the matter.

Q. You paid some money to Kerr?

A. Not at the time.

Q. Afterwards?

A. After Dobbins didn't pay the notes when they became due, I helped to pay some of the interest.

Q. How much did you pay?

A. I don't remember.

Q. Were you to pay one-fourth on the contract?

A. I don't remember how that was, but I remember I did pay for some time one-fourth of the interest.

403 Q. One-fourth of the amount due Kerr?

A. Of the interest.

Q. One-fourth due at a time?

A. Yes, sir.

Q. Then you and Dobbins were purchasers of Kerr, were you not?

A. No, sir; I never considered it so.

Q. Why did you pay one-fourth of the purchase money?

A. I considered Mr. Dobbins was a purchaser of the property; I never considered I was the purchaser.

Q. I wish you would state, under oath, who purchased one-fourth interest of Kerr in the south half of the fractional section; Dobbins alone or you and Dobbins together?

A. As I said before, I considered Mr. or Mrs. Dobbins purchased that of Kerr; that I was not interested in the purchase, except I was to be employed in the case and was to have a certain part of the profits.

Q. What portion of the profits?

A. I believe it was one-fourth.

Q. Weren't you to pay one-fourth of the costs?

A. I don't think any definite arrangement was ever agreed on

between Dobbins and I. I tried to get him to do it, but my recollection is it was always left in an unsettled state.

Q. When you finally settled didn't you get one-fourth?

A. When I finally settled I got $4,000.

Q. You got one-fourth of the purchase money?

404 A. No, sir; my recollection is — Mrs. Dobbins for $20,000.

Q. You got $4,000 out of the twenty?

A. Yes, sir.

Q. You got $4,000 out of the twenty thousand paid her?

A. Yes, sir.

Q. Who got the balance? She didn't get but about $13,000, did she?

A. I don't know how they divided it up; I didn't have anything to do with settling it. I understood that she got $20,000, and I got $4,000. I know I got $4,000 and I understood she got $20,000.

Q. Didn't you understand Gibbons got $1,000?

A. I think I did understand it.

Q. Didn't Bennett and Crawford get a thousand?

A. I don't know how much Bennett got.

Q. How much did you hear?

A. Bennett told me he was not going to get anything; that he was not going to get but $50, and he was doing it all out of kindness.

Q. I had employed you as attorney of Kerr to assist me before any of the negotiations with Dobbins, had I not?

A. I have no recollection of ever being employed that way or of ever being paid a cent by you or Kerr.

Q. I know you was not paid much, except out of the purchase.

A. I didn't consider I was Kerr's attorney, except as it was

405 necessary to act for him for Mrs. Dobbins.

Q. What do you mean by that?

A. Or for the Dobbins interest.

Q. You represented the Dobbins interest, and not the Kerr interest?

A. Yes, sir.

Q. Did you ever see that paper before?

A. I don't know whether I ever did or not.

Q. Read it?

A. I would not say I had not; my name appears to be scratched out with pencil and then rubbed out.

Q. Who did that—you or Dobbins?

A. I never did it, and know nothing about it.

Q. State what that contract is; read it to the master.

A. There is the contract; the master can read it if he wants to.

Q. I wish you would state whether this is not signed with your consent, and with your approval, as Kerr's attorney and Dobbins' attorney at the time he purchased the quarter interest in that land.

A. My best judgment, I never saw that paper before.

A copy of the paper referred to by the witness is hereto annexed and marked Exhibit L, Monroe's deposition.

Q. In the original sale and dealing with Mr. Dobbins, whose attorney *was* you?

406 My understanding of the matter was that I never was Mr. Kerr's attorney. I never presented a bill to him, and never expected he would pay me anything, and never acted for Kerr, except so far as it was necessary to act in the conduct of the case to protect Mr. Dobbins' interest. I never should have thought of presenting a bill to Kerr for my services.

Q. Were you not to have one quarter of Dobbins' interest for the payment of your services?

A. My recollection of the verbal agreement that was made at the time was I was to have one-fourth of the net profits.

Q. One-fourth of one-fourth?

A. One-fourth of the Dobbins interest.

Q. You and he were partners?

A. Not exactly that. He was to have the title, and I was to have one-fourth of what the property was sold for. It was then contemplated it would be sold within a short time.

Q. Who contemplated it should be sold?

A. I think you thought so, and assured Dobbins that it would not be more than two years' interest before the thing would be closed—Dobbins' interest.

Q. Any park-commissioner that assured him so and assured you so?

A. I think that during the negotiation Mr. Dobbins told me that one of the park commissioners had told him it would be

407 closed up within a short time. I think that was understood.

Q. State whether some of the park commissioners, one or more, did not tell you and Dobbins—did not tell you at the time you and he were making the purchase—that the commissioners would buy this land within a short time?

A. I think Mr. Dobbins told me that one of the park commissioners had stated to him that would be the case, and if he purchased at that amount it would be a good thing, but I don't think any one of the park commissioners told me that.

Q. Did Dobbins tell you that the park commissioners said so as an inducement to you to go into it?

A. At that time I had confidence in the Kerr title, and did not require any such assurance. I don't think that influenced me; it might have influenced Mr. Dobbins.

Q. It appears from the record here that $21,000 was paid to somebody for the Dobbins title—his quarter interest in this land. Please state how much of that $21,000 you got?

A. I got $4,000 exactly.

Q. For what consideration was that $4,000 paid you?

A. It was paid me in settlement for my services in the Kerr case.

Q. As attorney for whom?

408 A. Mrs. Dobbins.

Q. State whether you did not, time and time again, enter yourself as attorney for Kerr.

A. I presume likely I did. The first appearance I ever entered in that case was for the vendees of Kerr. I presume likely, as the

case went along, my name appears in the record as counsel for Kerr. I presume that is the case.

Q. Please state whether it was not part of the contract that you should take and carry on Kerr's interest as attorney.

A. No; I don't think that was it; it was understood I was to act for Mrs. Dobbins, and to act with you and Kerr's counsel in defending the Kerr title; that was understood.

Q. Don't you know until 1874 Mrs. Dobbins never set up any claim to this land; that it was in Dobbins' name and Rhodes' name?

A. It was in Rhodes' name; I know that.

Q. Did Mrs. Dobbins ever consult you or speak to you about any interest in this land until after 1874?

A. I don't remember I ever had any consultation with Mrs. Dobbins about the arrangement of this case at all, or about her interest in the case, until the trial before Judge Harlan.

Q. That was in 1878?

A. Yes.

409 Q. Although you had been engaged in the case from 1870 or 1871 until 1877, you never heard Mrs. Dobbins had any interest in the case?

A. Yes; I had heard that, but not from her.

Q. Who did you hear it from?

A. Mr. Dobbins.

Q. When?

A. I don't remember, but it was before that.

Q. Don't you know, as a matter of fact, that it was never claimed by Mrs. Dobbins until after Dobbins went into bankruptcy?

A. I don't know anything of the kind.

Q. Don't you know she never paid a cent of money for the land?

A. I know Mr. Dobbins paid the money that was paid down at the time; that it came through his hands; I know that; that is, I understood so.

Q. I guess you saw it paid?

A. I don't remember I saw it paid; I don't think I did.

Q. You never heard of Mrs. Dobbins having any interest in this land until after Mr. Dobbins went into bankruptcy?

A. Yes; I had before that; that is, Dobbins had told me before that some time that she had.

Q. When did he tell you so?

A. I don't remember.

410 Q. Can you state when Dobbins first said he had accidentally found the deed from Rhodes to his wife, and that he was glad to find that; the title was placed in Mrs. Dobbins, instead of himself.

A. I remember you telling me he said that; I don't remember of his telling me; I remember you told me that you was glad of it, but I don't remember that he ever told me that.

Q. How long before the deed from Rhodes to Mrs. Dobbins was recorded; did that occur more than a few days?

A. I don't remember; I don't know when the deed was recorded.

Q. State whether you did not understand from Dobbins and myself that about the date of the record of that deed Dobbins said he had accidentally found that deed somewhere, and Rhodes had died in the meantime, and he was astonished to find it was deeded to his wife?

A. I say he never told me that; you told me that he had told you that.

Q. About the time of the record of the deed?

A. He never told me that.

Q. Didn't you know at that time Mrs. Dobbins had never paid a cent on that land?

A. No, sir; Dobbins had told me before this money he had paid on the Kerr tract, $25,000, — had obtained it, I think he told
411 me, by the sale of bonds that belonged to his wife.

Q. You think Dobbins told you?

A. Dobbins told me that. I think there was $25,000 of it that he told me.

Q. Did he tell you where she got the $30,000?

A. No; I didn't ask him.

Q. Did you ever have any talk with Mr. Price about the title?

A. I had several talks with Price and others.

Q. When?

A. Along during the year after Kerr began to advertise the sale of Mrs. Dobbins' interest under the trust deed to secure the notes.

Q. Give the substance of the conversation.

A. I could not do it.

Q. Was it to buy out Dobbins' interest?

A. Yes.

Q. Independent of Kerr?

A. Yes.

Q. And use it to defeat Kerr's title?

A. No, sir; I don't remember anything of that kind. What I was trying to get at was to get the most I could for Mrs. Dobbins' interest, and make a settlement that was satisfactory to her.

Q. What arrangement did you have with Price about it?

A. I never had any arrangement with Mr. Price.

Q. What promise did he make you about buying Dobbins' interest?

A. I don't remember he ever made me any promise. I
412 think he heard what I had to say, and said he would bring it up before the board and talk it over.

Q. State what you said to him?

A. It was to make him offers of the Dobbins interest at certain prices, different prices.

Q. Did he tell you what he thought he could get from the park commissioners for the Dobbins interest?

A. I don't remember whether he did or not. I don't remember, but he never made me a direct offer.

Q. The question is whether he did not tell you what he, as one of the members, would try to get for the Dobbins interest.

A. I don't think he ever put it in that way. He told me a number of times that he would do what he could to get a sale of the property, provided we would take a reasonable price for it.

Q. That is, the Dobbins interest?

A. Yes, sir.

Q. Not the Kerr interest?

A. I was not talking about the Kerr interest. I was talking about the Dobbins interest.

Q. State if he told you at any time what he thought he could get for the Dobbins interest, which was a quarter interest.

A. I don't know that he ever did. He might have asked the question whether we would take so much if the park commissioners would give it, but never made any offer.

413 Q. That is, for the Dobbins interest alone?

A. Yes.

Q. Did you understand from him at the time that if he got the Dobbins interest it would be used as against the Kerr interest, if possible, and that he wanted to buy it in order to defeat the Kerr interest?

A. I don't think anything of that kind ever occurred; he didn't say how it might be used. I never looked at it; I don't remember he ever said anything to me that the park commissioners intended to use that.

Q. Where did you have the conversation with Price?

A. Mostly in the park commissioners' office.

Q. Any other park commissioners present?

A. Yes, there was other park commissioners present once or twice when I was there—three or four times.

Q. Who?

A. I think Mr. Morgan was there once; what occurred at that time I don't remember. I remember of seeing Cornell and being there once when Sherman was there, but I couldn't tell what occurred at any particular time.

Q. Did you have any conversation with Price at his house?

A. No, sir.

Q. Did you have any in your office?

A. I don't think Mr. Price ever came into my office about it.

Q. Wasn't he a client of yours?

A. No, sir.

414 Q. You can't remember whether a conference took place, or who was present with Price, about buying out Dobbins' interest?

A. I spoke of it when I would meet the park commissioners, those I knew, on the street or in their office. I don't remember any of them coming to my office to see me about it. I would not say they did not, but if they did there was nothing said that impressed itself on my mind so I recollect it at all.

Q. Was there any litigation between Kerr and Dobbins as to the extent of Dobbins' interest?

A. I don't know but in the bill filed to enjoin the sale under the trust deed, but there were allegations that would raise that question;

but I don't remember whether there were or not. I don't know whether there were or not.

Q. Do you remember whether you did not, as the attorney of Dobbins or Mrs. Dobbins, claim on those notes of $50,000 there was only about $32,000 due?

A. I think, now you call my attention to it, there were allegations in that bill that would lessen the amount claimed due upon those notes if the position was sustained which was taken in the bill.

Q. Wasn't that litigation pending between Kerr and Dobbins and Mrs. Dobbins and you at the time of this compromise between Kerr and the South Park Commissioners?

A. I don't know whether that was out of the way or not. I don't know whether the case has been finally disposed of or not.

415 Q. You know it has not?

A. I don't know.

Q. State this fact: When Kerr undertook to compromise with the South Park Commissioner to cover the whole title to this property wasn't there serious litigation between Dobbins or Mrs. Dobbins and Kerr as to the amount due from them to Kerr on the land, and whether that did not amount to forty or fifty thousand dollars?

A. I don't know of any serious litigation, except the allegations that were set up in the bill; I am not aware of any other litigation; I am not now aware that that was ever used to prevent a settlement with the South Park Commissioners.

Q. I ask you whether the difference between them did not amount to forty or fifty thousand dollars.

A. I don't remember the amount.

Q. Do you remember the amount you alleged, in the bill for Mrs. Dobbins, was due on the notes?

A. The bill will show for itself; I don't remember.

Q. Don't you remember it was $32,000 instead of $80,000?

A. I say I don't remember.

Cross-examination by Mr. LEAMING:

Q. Do I understand you as stating that at the time you re-
416 ceived the $4,000, part of the purchase-money that was paid to Mrs. Dobbins, that you received that as a full settlement for your services in whatever interest you might have in profits arising from that transaction?

A. Yes.

Q. Now, do you remember of talking to Mr. Kales about endeavoring to sell Mrs. Dobbins' title while he was attorney of the park?

A. I remember meeting Mr. Kales at the park commissioners' office once, but I don't remember now what conversation occurred. I might have spoken to Mr. Kales about this thing, but never arrived at any conclusion. I might have given him my idea and he might have expressed his, but I don't remember we ever came to anything.

Q. They were propositions on your part which you desired to make on behalf of Mrs. Dobbins for the sale of her interest?

A. I don't think I ever made a proposition to Mr. Kales. Mr.

Kales told me he had refused to have anything to do, or give any advice, about negotiations or settlement of business, or anything of the kind; that he had as much as he could do to conduct the litigation, and absolutely refused to do that—to say anything about it.

Q. Do you remember of offering the Dobbins title to any of the commissioners for $3,500 an acre? Was that the price that was named at one time?

A. I think it was.

417 Q. Now, you stated when you saw the publication in the paper in reference to the proposition of settlement with Kerr by the commission your impression now is that at that time you formed an opinion that the offer which had been made by Mrs. Dobbins would have been more beneficial than the contract?

A. Yes; I said at the same time I didn't remember what it was, but that was the impression on my mind.

Q. Do you remember of ever making a proposition to sell her interest to the commission for as low a sum as the price named in the written communication you finally made prior to that time?

A. I said my impression is that an offer was reduced to writing that was made by Mrs. Dobbins as the lowest amount she would take, and I said I thought probably that was left with the park commissioners and that would fix it. The last sum I ever mentioned to the park commissioners was shortly before the acceptance of this offer; that was a short time before; whether I left a written proposition there with the park commissioners I don't know, but my impression would be that I did.

Q. You don't remember the amount?

A. No, sir.

Q. Prior to the attempted sale on behalf of Kerr under the trust deed given by Rhodes had you attempted to negotiate a sale

418 *to* Dobbins' interest as separate and distinct from the entire matter, or negotiate the entire sale?

A. I don't think I ever made any propositions to the Park Commissioners that did not include the whole, both Kerr and the Dobbins matter, until after that.

MR. FULLER: Can you recollect about what time that was?

A. I think it was in June or July, 1877.

Q. That the first bill was filed?

A. That it was advertised for sale.

Adjourned to Feb'y 9th, 1882.

Exhibit to Deposition of H. S. Monroe.

This agreement made between T. F. Dobbins and Jno. C. Dunlevy, both of Chicago, witnesseth, that the said Dunlevy hath agreed, and doth hereby agree, and bind himself to procure for the use of said Dobbins & H. S. Monroe from W. P. Kerr, a conveyance by deed of release and quit-claim of the undivided one-fourth part of the south ½ of fractional sec. 13, T. 38, R. 14 E. in Cook county, Ill., said conveyance to be made as follows: The N. ½ of the S. W. ¼ of said

fractional sec. to be so conveyed by said Kerr to Dan'l Rhodes, of Cleveland, Ohio, to be held in trust, and mortgaged as we may direct, for the sum of $8,000 per acre, one-fourth of which
419 mortgage securities are to be delivered to said Dobbins & Monroe, and the remaining three-fourths to said Dunlevy and Kerr, and the undivided one-fourth of the remainder of said fractional ½ sec. to be conveyed to such person as said Dobbins may direct, which said undivided fourth of said land said Dobbins agrees to pay for as follows: $10,000 cash, which is paid — two (2) notes of $10,000 each, payable in thirty & sixty days, respectively, from June 1st inst., and execute two notes of $25,000 each, payable in two years from June 1st, 1873; all said notes to be made payable to the order of said T. S. Dobbins, and endorsed by him to said Kerr, and to bear 8 per cent. interest per annum, payable semi-annually at the banking-house of Wrenn, Tyler & Co. in Chicago, and said said last two notes of $25,000 each, are to be secured by a trust deed on all of said land so conveyed, except the north 40 acres of said quarter sec. above described, and said deeds for said Kerr are to be delivered on or before the payment of the second note above mentioned of $10,000, when the two $25,000 notes and trust deed to secure the same, are to be executed and delivered to said Kerr.

And said Dobbins, in consideration of the fact that said sale has been made to him, hereby agrees with and binds himself to
420 said Dunlevy not to sell his said interest to any one of whom said Dunlevy shall not approve, and neither party shall sell, except to or amongst themselves, any part of or interest in said lands, except with the written consent of the other party.

And it is further agreed that neither party hereto shall sell his interest to the park commissioners for a less sum than $5,000 per acre, and neither party shall sell to them, or to any one interested for or with them, unless the whole tract shall be sold.

And it is further agreed that as said Dunlevy has had, and now has, full charge and control of said land, and the suits and litigation pending in reference thereto, that he shall continue to exercise such charge and control, and no entries shall be made in said suit, and no compromise, without the consent in writing of said Dunlevy thereto, or his being personally present and consenting.

And the parties hereto hereby bind themselves, each respectively to the other, in the penal sum of fifty thousand dollars, to be taken and agreed as liquidated damages to hold, use, and control their respective interests in said land for the best interests of each in proportion of the amount agreed by them.

June 1, 1872.

JNO. C. DUNLEVY. [SEAL.]
T. S. DOBBINS. [SEAL.]

421 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COM'RS, Complainants,

vs.

JAMES MORGAN *et al.* Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 8th day of February, A. D. 1882.

Present: Mr. Fuller, for complainant; Mr. Leaming, for defendant Morgan; Mr. Dunlevy, for defendant Kerr.

J. F. FOSTER, a witness on behalf [of] the complainant, being first duly sworn, was examined in chief by Fuller, and deposes and says as follows:

Q. Please state your name and occupation.

A. My name is J. F. Foster; occupation, civil engineer.

Q. In whose employ are you engaged, and how long have you been?

A. I am employed by the South Park Commissioners at the present time, and have been for the past two years and a half.

Q. Where are the offices of the South Park Commissioners?

422 A. Their main office is 94 Fifth avenue, and they also have offices at the Park Retreat.

Q. Where are you located?

A. At the Park Retreat.

Q. Have you examined with reference to the area of the real estate in controversy in this case, which is described as the south fractional half of section 13, to see what plats or plans of that tract, sometimes known as the Phillips tract, there are at your office?

A. Yes, sir; I have examined, and the only plan I can find there that shows it at all is the working plan made by Olmstead & Vaux.

Q. Wording plan for what?

A. For the improvement of the South Park.

Q. What are those working plans based on?

A. I suppose they were based on surveys which were forwarded to them previous to their making the plan.

Q. At what time were those plans of Olmstead & Vaux made?

A. I think in 1870; some time about that time.

Q. Have you ascertained from those plans what the area is of the tract in question? And, if so, state.

Objected to as leading.

A. Yes, sir; taking their plan, and taking the shore line as shown on that plan of Olmstead & Vaux, I have made a calculation of acreage, and make it 194 acres.

423 Cross-examination by Mr. DUNLEVY:

Q. What is your relation to the South Park Commission?

A. I am employed by them as their engineer.

Q. How long have you been employed by them in that capacity?

A. I have given my entire time to them for a little over two years.

Q. You have been engineer for two years?

A. Yes, sir.

Q. What are your duties as engineer of the South Park Board?

A. To lay out the improvements made and direct the manner of making the improvements; to see that they comply with the plans furnished.

Q. Plans furnished by whom?

A. The improvements are being made practically from the plans furnished by Olmstead & Vaux, there have been slight changes.

Q. What was the scope of duties and the power of Olmstead & Vaux?

A. They made the entire plans for the improvement of the park—that is, the landscape design; located the elevations and depressions, water, walks, buildings, and everything; made complete plans for the finish of the park.

Q. Did their plans include both the topographical and linear survey of the park?

424 A. Their plans did not furnish any survey of the condition of the ground at the time—in the condition it was before any improvement was made. Their plans simply show what the ground is to be after it is finished, after the completion of the work in accordance with their plans. They do not show anything except the general outline of the park, with the improvements they contemplate having made.

Q. Then I understand the record of your office does not show any topographical survey of this ground taken for the park, or any linear survey of the ground in this tract?

A. The only thing I have that shows any outline is the plan furnished by Olmstead & Vaux.

Q. You say that includes nothing but improvements?

A. That shows the improvements which are to be made within the limits of the park, in accordance with their ideas.

Q. Do you intend to say, or do you not, that their plans and surveys do not show the amount of land in each particular tract embraced in the South Park?

A. Their plan does show the area of each particular tract.

Q. You have never seen a plan or survey, then, of Olmstead & Vaux, which shows the linear boundaries of the Phillips tract?

A. No, sir.

425 Q. Do you know whether there is on file in the park board a linear survey showing the exact number of acres—I speak now without reference to the improvements they are to make—the exact number of acres in the south half of fractional section 13, 38, 14?

A. I have never seen any such record.

Q. Can you give the date of any plan of Olmstead & Vaux, to which you refer, that is filed in the South Park office?

A. I cannot give the exact date, but they were in the park office,

these plans, previous to the fire, but where they came from I do not know.

Q. Were they burned up at the time of the fire?

A. No, sir; not the ones I have; some of the plans were, but these among others were saved.

Q. Are you sure the plan you have was not burned and reproduced afterwards?

A. No, sir; this is the original working plan made by Olmstead & Vaux.

Q. Can you give the date of the original working plan?

A. I cannot give the date.

Q. It does not show?

A. No, sir.

Q. Does not show whether it was before or after the fire?

A. No, sir.

426 Q. How do you know it was not produced after the fire?

A. The secretary told me it is the same. There is no date on the paper.

Q. Do you testify to what the secretary tells you?

A. He tells me it is the original plan.

Q. When did he tell you so?

A. About two weeks ago.

Q. When did he tell you so last?

A. I think then.

Q. What is the name of the secretary who so told you?

A. Harmon.

Q. Will you produce that plan?

A. I can produce it.

Q. Will you this afternoon?

A. I will have to go to the park for it; it would be doubtful about my getting it here this afternoon.

Q. When did you examine it last?

A. I think about ten days ago or two weeks.

Q. Did you have it in your possession then?

A. Yes.

Q. In whose possession is it now?

A. In my office down on the park.

Q. It has been in your office ever since you examined it, ten days ago?

A. Yes, unless it has been abstracted from the office. I put it in its proper place.

Q. Will you produce that to-day or to-morrow?

A. I will produce it to-morrow.

Q. When did you make any estimate of the quantity of land embraced in this tract?

427 A. About ten days ago.

Q. You never did until about ten days ago?

A. No, sir.

Q. Who requested you to make it?

A. Mr. Harmon.

Q. Will you state by what means you arrived at the quantity in this Phillips tract, if there was no linear survey, as you say there was not?

A. Olmstead & Vaux's working plan of the east park shows the outline of the park, as it is contemplated to be improved, which outlines are supposed to be the original outlines of the park, bounded on the north by 56th St., south by 67th St., west by Stony Island avenue, and east by the lake shore. The distance between 59 and 63rd streets, which, I believe, are the north and south boundaries of this tract, I arrive at by surveys which had been made and recorded in the atlas of the town of Hyde Park; then, to ascertain the east and west lengths of it, I took Olmstead & Vaux's working plan, which shows the lake shore and also Stony Island avenue, and from that plan I figured the distance between the two points, and with these distances obtained the area.

Q. Do I understand you their working plan shows the number of rods of the north line and the south line?

428 A. It shows the number of feet from Stony Island avenue and the lake shore at all points from 56th to 67th streets.

Q. I will ask you whether the plat shows the number of rods and feet on 59th from Stony Island avenue to the lake and on 63rd?

A. It is a plan drawn to scale. I locate 59th street on this plan, and apply the scale, and it gives the distance from Stony Island to the lake shore.

Q. Then I understand you to say their survey does not show, unless you figure from the scale, the length of the line on the north side and on the south side of the land?

A. It is only arrived at.

Q. You guess at it?

A. No, sir; you arrive at it from the scale of the plan.

Q. There is no real measurement?

A. There are no dimensions given on the plan for any purpose whatever; it is drawn to scale, and from that we work all the improvements.

Q. Did you make any examination to see whether the scale was correct?

A. I have no means of proving it, because I did not know where the lake shore was at that time.

Q. Then you don't know anything about it?

A. Except this plan; that is all I know about it.

429 Q. Then all you know about it is the working plan, that is represented to you by the secretary, Harmon, to have been made prior to the fire?

A. It is a working plan, as I understand it from Mr. Harmon, furnished by Olmstead & Vaux.

Q. You don't know when it was made, except as Mr. Harmon tells you?

Q. That is all. There is no date on the plan, and I have no information, positively, about it.

Q. You don't know whether it was 1868, '69, '70, '71, or '72, from your own knowledge?

A. From my own knowledge I couldn't say I know when.
Q. Where were you in 1870?
A. I was at Rockford in 1870; that is, I was there most of the summer.
Q. What time did you come to Chicago?
A. I was there during the winter of 1870 and 1871; went away the next summer.
Q. Were you down on the park land during 1870 and 1871?
A. I presume I was down there.
Q. Do you know you were?
A. I am not positive.
Q. You don't know you ever saw the land after 1871?
A. Yes, I have seen it; I do not say I was there in 1870; I was there previous to that.
Q. Were you on the land in 1869, or '68, or '67, or '66?
430 A. Whether I was on that particular 200 acres I don't know. I made surveys down and through that country during those years, and I presume I might have been on that 200 acres.
Q. In what years did you make surveys?
A. In 1868 and 1869?
Q. What land did you survey—whose land?
A. We surveyed some property north of 57th St., run some lines over there. I was working for my father at the time.
Q. Whose land was it?
A. I don't know.
Q. Have you any records of the surveys made?
A. I presume he has in field-book.
Q. Can you bring them in to-morrow?
A. I will look and see if I can find them.
Q. You don't know whether you can or not?
A. I presume I can bring records of surveys of that quarter if you want.
Q. What was the nature of the shore on this half section in 1869 and '70 from 59th to 63rd was it low or high?
A. I would not want to say.
Q. Do you know or do you not know in 1869 and '70 there was a timber ridge near the east side of this tract with timber 15 or 20 feet high?
A. I do not know.
Q. Do you know that in 1870 and 1871 there was a large amount of gravel and sand taken from this shore by the South Park
431 Commissioners and sold to the extent of $3,000 or $4,000 worth of sand and gravel?
A. I do not know there was any taken.

Redirect-examination:

Q. You say the plans do not show the area of each particular tract?
A. They have no record, I think, showing what the area of each particular tract is.

Q. But they are drawn to scale from which you can ascertain the area of particular tracts?

A. Yes; if the outline is correct—if the outline of the park is correct any particular piece can be ascertained.

Mr. DUNLEVY; I ask that to-morrow you will produce the original map referred to by you.

On Thursday, Februrary 9th, witness produced before the master the map called for, and agreed to make a reduced copy to be used on this hearing.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS, Complainant,

vs.

JAMES MORGAN *et al.*, Defendants.

432 Testimony taken before Henry W. Bishop, master in Chancery of said court, Thursday, the 9th day of February, A. D. 1882.

Present: Mr. Fuller, for complainant; Mr. Leaming, for defendant Morgan: Mr. Dunlevy, for defendant Kerr; Mr. Rae, for Mrs. Phillips.

W. B. WIRT, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. FULLER and deposes and says as follows:

Q. Please state your name and occupation.

A. My name is W. B. Wirt; I am deputy clerk of the circuit court of the United States.

Q. Have you examined the record in the suit at law entitled William P. Kerr *vs.* Mary C. Dobbins?

A. I have.

Q. The judgment in that case was rendered on the 11th day of June, 1879, was it not?

A. Yes, sir.

Q. What day was the motion made to set it aside?

A. The next day, June 12th.

Q. Have you searched the record to see whether there was any disposition made of that motion; and, if so, what?

A. I have searched the index for each record, and I do not find any order entered in the case from June 12th to the present
433 time.

W. B. WIRT.

Subscribed and sworn to before me this 16th March, 1882.

H. W. BISHOP,

Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COM'RS, Complainant,
vs.
JAMES MORGAN and Others, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Thursday, the 9th day of February, A. D. 1882.

Present: Mr. Fuller, for complainant; Mr. Leaming, for defendant Morgan; Mr. Dunlevy, for W. P. Kerr; Mr. Rae, for Mrs. Phillips.

THOMAS S. DOBBINS, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. FULLER, and deposes and says as follows:

Q. Please state your name.
434 A. My name is Thomas S. Dobbins.
Q. How long have you resided in the city?
A. Since 1870.
Q. In this case the controversy arises over land known as the Phillips tract; do you remember some property designated in that way?
A. Yes, sir.
Q. It appears that a quarter of that land was conveyed to Daniel P. Rhodes, of Cleveland; do you remember such a conveyance?
A. Yes, sir.
Q. For whom and by whom was the purchase of that land made?
A. It was made by Mrs. Dobbins.
Q. Do you remember how much money she paid down?
A. $30,000.
Q. Whose money was that?
A. Mrs. Dobbins'.
Q. Why was the title put in the name of Rhodes?
A. Mr. Dunlevy suggested some one out of the State should take the title in order to prosecute the suit.
Q. In the summer of 1879, or before that, do you know if Mr. H. S. Monroe made any effort to get the South Park Commissioners to purchase this quarter interest?
A. Yes, sir.
Q. Do you remember at what price Mr. Monroe offered it for Mrs. Dobbins?
A. Mr. Monroe had a memorandum book out, and suggested
435 that he would sell the interest, as it stood then, for $65,000. The idea was held out by Judge Dunlevy he would take $40,000 cash for what Mrs. Dobbins owed. Monroe went to the commissioners, and I went there once or twice myself.
Q. The $40,000 was to take up the incumbrance, was it?
A. Yes, sir.
Q. It was on that basis, $65,000, and Mrs. Dobbins would clear off the incumbrance?

A. Yes, sir; for the one-fourth, as it stood there. Mrs. Dobbins always claimed one-fourth of the fraction, which Dunlevy represented was 217 acres; she claimed she bought one-fourth of that, and if it was all lost but that, she claimed that.

Q. Do you recollect about when that was?

A. I have not followed it; it is a year and a half or two years ago. It was some time before the announcement of the sale to the park commissioners. I had been there two or three times, and Monroe had been there.

Q. You say some time before the announcement of the sale to the park commissioners; you mean the publication in the newspapers of an alleged contract?

A. Yes, sir; a report they had bought it for $90,000; it was previous to that, some time.

Q. Do you recollect where the down-town office of the park
436 commissioners was at the time?

A. I forget whether it was on Washington St. or the corner of Randolph and Dearborn; I forget which it was.

Q. It was either at the office on Washington St. or the office corner of Randolph and Dearborn?

A. Yes, sir; it was previous to their moving it down to the Times building.

Cross-examination by Mr. LEAMING:

Q. Were you present when this proposition you speak of was presented?

A. I went in with Monroe to the office when he had this memorandum I would not swear positively I was present when he presented it.

Q. You don't know whether you were or not?

A. I was present when he spoke at one time to Mr. Morgan, but when he presented the paper I didn't see him present it.

Q. Were you present when he spoke to Morgan?

A. Yes, sir; we went together.

Q. Where was that?

A. At one of these two offices; I don't remember which.

Q. When was it?

A. Some time before the sale was made. I was trying to get out what I could, and went there a number of times myself.

437 Q. Do you remember whether there was any price named by Mr. Morgan?

A. The price we had figured up was about $65,000.

Q. I am not asking that.

A. I do not remember of their saying anything. I made the remark to Mr. Morgan we would sell a good deal cheaper than they could buy it for hereafter.

Q. Did you or did you not name any figures?

A. I don't know that I did.

Q. That memorandum which you speak of, was not that made at your house?

A. I don't know where he made it. He brought it up and showed it to Mrs. Dobbins.

Q. Was not that just before she made the deed?

A. It was a long time before, six months or a year before.

Q. Didn't you ask $3,500 an acre for Mrs. Dobbins' interest?

A. I might have asked it some time; I don't know as I did. I was not at liberty to ask any price, except what Judge Dunlevy said.

Q. Did you have Judge Dunlevy's consent for the figures which you made?

A. I don't remember; he named different figures at different times.

Q. And the figures named you asked of the commission?

438 A. Not in this sale; this was after the sale was secured — Mrs. Dobbins, and I went in her behalf. He had clandestinely obtained a judgment against her, and held it over her and kind of forced her into a sale. I tried to get out what I could for her.

Q. Do you remember prior to the year 1879 you had any talk with Mr. Morgan for any figures less than $3,500 an acre?

A. I don't know as I ever had any talk with Morgan about the price per acre; we didn't know how many acres there were.

Q. Do you remember of any figures you ever named to Mr. Morgan?

A. I would not be positive whether I made any figures. I told Commissioner Morgan and others it could be sold for about $65,000.

Q. Are you sure you told Mr. Morgan that?

A. I would not be positive.

Q. He might have been present when you stated that?

A. I went in a number of times; sometimes two or three were there, sometimes only one. I was anxious to close it up. They wouldn't give me any conference at all.

Q. The $65,000 offer you speak of, was that subject to this mortgage?

A. No, sir; I intended that to relieve the mortgage; did not expect to sell it to them with the mortgage against it.

Q. You expected to sell it to them clear of everything for that figure?

A. Yes; if I sold it at all.

439 Q. Did you ever send them a written communication to that effect?

A. No, I did not; Mr. Monroe drew it up; I don't know whether he did or not; he was Mrs. Dobbins' attorney.

Q. At the time that proposition was spoken of, this judgment was standing against Mrs. Dobbins, was it not?

A. The final judgment was $68,000; when she settled the matter with Bennett an- her attorney and Gibbons, she got a paper with reference to the judgment that the judgment should be cancelled.

Q. I will ask you whether you had any such stipulation, or whether you had any agreement with Dunlevy at the time you proposed to sell for $65,000?

A. No; had no stipulation; only verbal.

Q. Did you have a verbal agreement?

A. Dunlevy told me if I would raise $40,000, he would release her claim.

Q. For $40,000?

A. Yes; upon that ground I went with Monroe to the commissioners; went personally, and he said he did, to try to save $25,000, if we could.

Q. When Mrs. Dobbins made the sale, what year was that?

A. It might have been a year or more ago; I don't remember; the papers will show; she had an attorney attending to the matter.

Q. Wasn't this proposition which you made, made shortly after that?

440 A. It was made six months or a year before that; it was a long time before.

Q. You are speaking now of the proposition Monroe submitted?

A. Yes; before the sale was made.

Cross-examination by Judge DUNLEVY:

Q. You say a judgment was taken clandestinely against Mrs. Dobbins?

A. That is what we think.

Q. Wasn't she served with process in that suit?

A. She will swear she never was.

Q. Don't the records show?

A. She says not.

Q. Don't the records show the United States marshal served her?

A. I don't know that; I never saw it.

Q. Wasn't that suit pending more than a year?

A. Never heard a word of it until you got judgment, and I had met you every day in your office.

Q. Answer the question; wasn't it pending about a year before judgment was taken?

A. Not to my knowledge; I never heard a word of it until you got judgment; that is why I say it was clandestine; I never heard a word of it until after the judgment, although I was every day in Judge Dunlevy's office.

Counsel handed the paper to the witness, a copy of which is hereto annexed and marked Exhibit "I."

Q. Is that your signature?

A. No, sir.

441 Q. Did you sign that paper?

A. I don't think I did.

Q. You say you did not?

A. I don't remember.

Q. Isn't it your handwriting?

A. I don't think it is; I never wrote such a hand as that, to my knowledge; I must have been crazy when I done it; I don't think I did; I have no remembrance of it; don't think I ever wrote it.

Q. Give a statement of the circumstances under which you bought

a quarter interest in this property, how you came to buy it, and who told you to do it.

A. You.

Q. Who else?

A. I don't know any one told me at first; after I talked with you about it awhile, then Mr. Rhodes was up here; he told me I had better make an investment for my wife.

Q. Mr. Rhodes told you to buy it?

A. After you talked to me I spoke to him about it; he said it was the best place she could put her money; he had some of her money at the time.

Q. Don't you know I had never seen Rhodes at that time?

A. I say you are the only man that talked to me about buying it.

Q. Did Chauncy Bowen suggest to you to buy it; one of the park commissioners?

A. No, sir.

Q. Did you know me at that time; had I ever seen you but once or twice?

442 A. I became acquainted with you afterwards.

Q. You bought it from my opinion, without knowing me at all?

A. I did become acquainted with you, and, I believe, you introduced me to a lawyer in Cincinnati; he said he thought it was a good purchase.

Q. That was after the purchase, was it not?

A. No, sir; it was before; you referred me to some one about the title; I don't remember any one now that ever said anything about buying it but you.

Q. Don't you know, and did you not learn through Chauncy Bowen, and, perhaps, other of the South Park Commissioners, that George M. Pullman was buying a quarter interest through Monroe, and you came and asked that you have it instead of Pullman?

A. No, sir; I don't remember anything of the kind.

Q. You did not know Monroe at the time?

A. No, sir; not at all.

Q. Never had met him?

A. I don't think I had.

Q. You met him before you bought it, and you relied on Monroe's recommendation—the title was good?

A. No, sir; Chauncy told me afterwards there no risk in buying it; you suggested Monroe to me.

Q. Didn't he own a quarter interest?

A. He was to have one-fourth to attend to the litigation.

443 Q. Wasn't he to pay one-fourth?

A. No, sir; he was to attend to the litigation and pay one-fourth of future payments.

Q. He did pay one-fourth of the interest?

A. I suppose he did for two or three years. I don't know; I think he did.

Q. Have you any writing with Monroe about his and your interest in the matter?

A. No, sir.
Q. Was it ever put in writing between you?
A. No, sir.
Q. Anything in writing?
A. No, sir.
Q. Don't you remember this paper was prepared for you and Monroe to sign, and you said to me, "Monroe, don't advance all the $30,000," and therefore I don't want his name to it?
A. I don't remember anything of the kind at all; never saw it before to-day.
Q. Didn't you tell different persons that you had a contract with me, or with Kerr, under which you were prevented from selling your interest without Kerr's or my consent?
A. No, sir.
Q. Didn't you tell Price so?
A. No, sir.
Q. Didn't you tell Monroe so?
A. No, sir.
Q. Didn't you tell Bisbee so?
A. No, sir.
Q. Didn't you tell Brown so?
A. Who is Brown?
Q. Any Brown.
A. No, sir.
Q. Didn't you tell White so?
A. No, sir; never did in my life; they are some of your pets.
444 Q. What do you mean by your testimony on cross-examination, there was some arrangement by which you could not sell without my consent?
A. I did not mean I could not sell, but I could not sell without making some arrangement for the payment of the notes. You told me once when you was hard up for money if you could get $40,000 you would take it. That is what I meant by it.
Q. You didn't owe me $40,000?
A. No, sir; but Mrs. Dobbins did.
Q. She didn't owe me.
A. I never saw anybody else in the transaction.
Q. You never saw Kerr?
A. A hundred times, but you are the only man that talked about the matter.
Q. Didn't he talk to you about it?
A. I believe you got him up once.
Q. Didn't he come to collect the money on these notes?
A. I don't know that he came up for that purpose.
Q. You paid him money, didn't you?
A. I don't know as I ever paid him anything.
Q. Didn't I write him letters once or twice by your request?
A. Yes, sir.
Q. You got answers from him, didn't you?
A. Yes, sir.

Q. You and your wife, Mrs. Dobbins, had a pretty serious litigation with Kerr about your interest in this matter, didn't you?

445 A. Litigation? I don't remember.

Q. Wasn't there a suit brought by Mrs. Dobbins against Kerr?

A. By Mrs. Dobbins? I don't remember of any such suit.

Q. You don't know anything about it?

A. Well, I can't recall to mind now that any suit was commenced by her.

Q. Wasn't this property advertised for sale under the power of trust at least twice or three times for Kerr to collect this money?

A. I understood you to say that Mrs. Dobbins brought suit againt Kerr, and it was advertised.

Q. That is not bringing suit?

A. It was advertised.

Q. Under the powers of the trust deed three times?

A. Yes.

Q. Did you not ask that he would refrain from selling; did you not come and beg me not to sell it?

A. No, sir; we stopped the sale; I don't know that we asked you not to sell; we stopped the sale.

Q. Didn't Mr. Kerr come up and agree with you that I should stop it for you?

A. No; we stopped it ourselves.

Q. Not the first time; the second time?

A. I don't know the first time; the second time you negotiated it.

Q. Yes; was that the third or fourth time it had been advertised?

446 A. I don't remember; it had been sold twice.

Q. Had it not been advertised?

A. It has been, at your solicitation.

Q. Before you filed that petition?

A. No, sir; it was not; it was advertised twice.

Q. Wasn't that the third time?

A. I don't know.

Q. Didn't you agree to pay all the expenses of the other advertising?

A. I don't remember that this was advertised more than twice.

Q. You say I agreed to take forty or fifty thousand dollars in lieu of your notes there; when and where was that, and in whose presence?

A. Well, I don't know in whose presence. You talked a good deal to me in no one's presence.

Q. You don't know when and where it was?

A. It was in the United States court building.

Q. In my own office?

A. Yes.

Q. Wasn't there an opening between that and the inner room, which was generally open when you were there?

A. Yes; there was an opening; it was shut most of the time, I think; when there was any business it was shut.

Q. Didn't I talk this to you over and over again before Brown and White?

447 A. No; never before them; I am not speaking—it was over in the other building; they were not in that building at all.

Q. That was when I was in the office of J. I. Bennett?

A. Yes; I never spoke to Brown & White about it.

Q. Didn't you tell them that you had a plan; didn't you tell them, Brown & White, that if Kerr would release you from this obligation you could sell your interest to the park commissioners for a large price?

A. No, sir; never; nor anybody else.

Q. In my presence?

A. No, sir; you always told me to sell if I could.

Q. You say you appeared before the park commissioners to try to sell this land?

A. Mrs. Dobbins', not mine; I talked and agreed with Mr. Monroe at different times to sell.

Q. At the park office?

A. By your request.

Q. Who was present in the park office?

A. One time Mr. Morgan was there; one time Price and different ones.

Q. You never met the whole board?

A. No.

Q. Did you ever talk with Price about it, or any one else except in the park office?

A. I have seen Price sometimes and said, "I wish you fellows would make up your mind to buy it."

448 Q. Where was he when you said that to him?

A. In the street.

Q. You lived near together, didn't you?

A. Yes.

Q. Didn't you meet sometimes in the alley between your two stables?

A. I might have met him in the alley.

Q. He used your buggy a good deal, didn't he?

A. No, sir; he never used it in his life.

Q. Your cutter?

A. His son did; he never did.

Q. If he had asked for it he could have had it, couldn't he?

A. If he had asked for it he could have had it.

Q. Did you ever have any talk with Price in the alley between your two stables about this matter?

A. I have said to him several times, "Price, why don't you make up your mind to buy this?"

Q. You never had any authority to sell Mr. Kerr's interest in this land?

A. Well, yes, as far as you gave it to me verbally; you always requested it of me.

Q. Yes, if they would offer $5,000.

A. No; not that amount, of course; I had no authority to sell that, unless you consented to it.

Q. Had you any authority to sell you- own unless I consented to it?

A. I thought I had; I don't know.

449 Q. Do you remember coming to me and telling me you could sell your interest, but there was such a feeling on the part of the South Park Commissioners against me they would not deal with me at all?

A. I don't know that I ever did; I don't remember.

Q. You didn't tell me so?

A. I don't remember.

Q. Did you tell me so or did you not?

A. No; I did not—not in that manner.

Q. What did you tell me?

A. I heard them say that they could not deal with you; you wanted too much for it; that is what they told me repeatedly.

Q. Didn't you say in that same conversation you could deal with me for your share; they declined to buy of me?

A. I tried to sell; you said if I could sell to raise the money to sell.

Q. Did you ever hear of any arrangement between Mrs. Dobbins and Mrs. Price about selling your interest there?

A. I don't think Mrs. Price ever spoke to Mrs. Dobbins at all.

Q. Did you ever hear of it?

A. I did not.

Q. Who paid the $30,000 on the first payments of this purchase?

A. Mrs. Dobbins. I paid it; she gave me the money, and I paid it to you.

Q. How did you pay it?

A. I gave you the money—checks.

Q. Where did she get that money?

450 A. Got some of it from her father. In 1867 I gave her $100,000.

Q. Where did she keep it?

A. Her father kept it for five years. We lived in Europe four years. He had entire charge of all her matters.

Q. Did she have her father's notes?

A. All she had was in bonds, trust deeds, mortgages, and such matters, all in her father's hands. She had them in a tin box in Peoria. She went to Europe from there.

Q. How did you happen to give your check on a bank here for $30,000?

A. Because Mr. Sporck gave me the money.

Q. Did he take your receipt for that $30,000?

A. He made a memorandum with her; did not take my receipt, I don't think.

Q. He gave you the $30,000 and took no receipt?

A. Took no receipt.

Q. Did he make a charge in the book against her?

A. I suppose he did. I don't know. He had a memorandum in this book there; three or four foolscap sheets of memorandum what he collected of interest.

Q. Where are those sheets; has she got them?

A. I don't think she has them.

Q. She has a tin box now with these papers in?

A. I don't know whether they are in the box now.

Q. They were in a tin box; I have seen the tin box, haven't I?

451 A. No, sir; you never did.

Q. She has two, hasn't she?

A. I don't think that she has.

Q. Didn't I look over your papers in that tin box?

A. I don't think you did. I don't know why you should.

Q. Then Sporck gave you $30,000 to pay for this land?

A. He didn't give me this $30.000. I don't know but I might have had thirty or forty thousand dollars. She had the money.

Q. You say Sporck had her money?

A. Her father had all her money.

Q. He gave it to you?

A. He didn't give it to me just at that time; he gave it to me when he received mortgages, and deposited to her credit.

Q. You didn't deposit to her credit?

A. Yes.

Q. You paid her?

A. I paid her $30,000; that money I had—I had drawn.

Q. Have you any book account of that?

A. Not any.

Q. All a verbal arrangement?

A. She kept it herself.

Q. Did she make a book account of it?

A. No.

Q. There is no entry of it?

A. Never was a cent put down. She had money of her own when this money was got—the $30,000.

452 Q. She didn't make any memorandum of it?

A. I suppose she never did.

Q. She had a hundred thousand dollars in money; what did she do with the other sixty?

A. I used some of it and never paid her back.

Q. Has Mr. Sporck's title been settled up?

Objected to.

A. Yes.

Q. Was there any charge against Mrs. Dobbins of the one hundred thousand dollars her father gave her?

A. I gave her that in 1867.

Q. She left it in her father's hand?

A. Yes; in money, bonds, and mortgages.

Q. Now, answer me; did her father then charge himself and credit her with $100,000 received from her?

A. No, sir; he never made a scratch when he took the box. He gave her about $16,000 himself.

Q. When?

A. Previous to my going to Europe.

Q. Before 1867?

A. Previous to 1867.

Q. Did he give it to her in money?

A. About eight hundred in money; the rest in property.

Q. Where was that property?

A. In Peoria county, the southern part of the State; a house in Peoria county; a farm.

Q. Ain't you entirely mistaken in your idea that I offered to take for Kerr $40,000?

453 A. I am not.

Q. Do you remember when I was trying to settle with you at your house at night—Mr. Monroe was there, you were there, your wife was there—when I offered you $60,000, or agreed, if you would enter into an agreement to let me alone and manage this, that Mrs. Dobbins should make $160,000 out of it; if not, I would make it up; do you remember that?

A. I don't remember exactly that.

Q. What do you remember about that?

A. Well, you made a proposition of that kind, and you wanted Mrs. Dobbins to assign everything over to you. I advised her not to. You wanted her to assign all her right, title, and interest.

Q. Was that in writing?

A. No, sir. I never saw any writing to be signed.

Q. Can you fix about the time that was? I went East the next morning. I told you I was going East the next morning, and I wanted to fix it that night; do you remember that?

A. No; I don't.

Q. Don't you remember that after I went East Mrs. Dobbins did sign the paper, and it was forwarded to me by Mr. Monroe?

A. I don't remember, although something of the kind might have occurred; I don't remember.

Q. I think I have got the paper.

454 A. I don't remember.

Q. Don't you remember in a conversation that night, after this had already been prepared in writing, a settlement between Mrs. Dobbins and Kerr, that she should have $160,000 for her interest in this land, including her indebtedness to Kerr, and I stayed as late as one o'clock or, perhaps two, in the morning, and said unless it was done then it never should be done?

A. I remember there was something you wanted to get up in writing and they didn't consent to it, I think.

Q. Don't you know they did consent and sent me the paper the next day?

A. I don't remember.

Q. We tried to agree upon that night?

A. I don't remember; I know you had a long paper drawn up there.

Q. Monroe had it?
A. You had it; you were the general manager.
Q. Wasn't it in Monroe's writing?
A. I don't remember.
Q. Wasn't it a paper Monroe and I had agreed upon with you there; he was then your wife's attorney?
A. I don't remember about that; I do remember you had a paper; for some reason it was not executed.
Q. Wasn't Mr. Monroe Mrs. Dobbins' attorney?
A. I understood so; yes, he was the attorney.

455 Cross-examination by Mr. RAE:

Q. Mr. Dunlevy has asked with reference to what you said to Cornelius Price in the alley, stated about some messages that he sent; will you state what messages you sent to Price or any other park commissioner?
A. Well, no particular messages, only that he would give a big price if I would succeed in making a sale. I never talked that with Mr. Price.
Q. Did you ever communicate with Mr. Morgan?
A. No, I did not; nor any other park commissioner.
Q. Did you state how much you would give to them?
A. Would make it a big object, ten, twelve, or thirty thousand dollars, if that would be any object.
Q. If they would agree to a certain price for him?
A. Yes.
Q. Did he ever employ you to carry any message to Judge Drummond?
A. No, sir.
Q. Ever send you down to Judge Drummond's farm, and did you pretend to go there?
A. Judge Dunlevy used to talk about influence to me.
Q. What did he say about it?
A. To create an influence to sell this land to defeat the suit—the park commissioners in the suit—or Phillips.
456 Q. How often was you requested to go and see Judge Drummond about it?
A. Once or twice.
Q. Did you tell him you had seen Judge Drummond?
A. I did to pacify him, but I never did; never went near his house.
Q. What did you tell him you said to the judge and what he said to you?
A. Only to create an influence; he thought it would have a benefit.
Q. State as near as you can remember.
A. I don't remember any words he put in my mouth.
Q. What object had you in seeing Judge Drummond?
A. Only to create a feeling of sympathy for somebody.
Q. For whom?
A. For our side of the case, his side of the question.

Q. Were you authorized to make any promises to the judge?
A. No, sir.
Q. What did you report you did with the judge?
A. I reported I had been there, but I was not. He was importuning me and Mrs. Dobbins for his pay, and I tried to pacify him, and consequently I told him a good many fooling fibs to keep him pacified in that way.
Q. Did he send you to anybody else?
457 A Only merely to try and see if I could not do something with the park commissioners to effect a sale of his property; he was eager to sell it, and Mrs. Dobbins in the same fix.
Q. Be fair. State what he said.
A. If I could enlist any one in the cause, Price or any one else, he would give a big bonus.
Q. Did he ever name any other commissioner except Price?
A. I don't know but that he did. I don't remember.
Q. Ever ask you to go to any one else besides?
A. No; I don't remember that, whether he did or not.
Q. Did you ever, directly or indirectly, or do you know of your wife, directly or indirectly, offering a bribe to Price or any other park commissioner to give a price for that land?
A. I did not.
Q. Did you ever solicit Cornelius Price in any manner, shape, or form to act as your friend in the board?
A. No, sir. I tried with him and others to sell it.
Q. Other park commissioners?
A. Yes; I spoke to many of them, Mr. Morgan or any one else.
Q. At the time that Judge Dunlevy took what you say was a clandestine judgment against your wife, did you know that he had received a large amount of money from the park commis-
458 sioners for Mrs. Dobbins' interest?
A. If he had, I didn't know it.

Cross-examination resumed by Mr. DUNLEVY:

Q. Then you admit, Mr. Dobbins, you told me a great many fibs?
A. In regard to this one matter.
Q. Tell me any fibs about anything else?
A. I don't know that I did.
Q. Didn't you tell me you had offered a bribe of $10,000 to Price?
A. No, sir; I never offered it.
Q. Didn't you tell me that?
A. I did not offer it.
Q. Didn't you tell me that?
A. I don't think I did.
Q. Didn't you tell me Mrs. Dobbins had offered it to Mrs. Price?
A. No, sir.
Q. Your mother lived near where Judge Drummond lived?
A. I don't know.
Q. Didn't you tell me so?
A. No, sir.
Q. Near Winetka?

A. No, sir.
Q. Your brother?
A. No, sir.
Q. Your sister?
A. Yes, sir; she lives out ten or twelve miles on the northwestern road.
Q. Did you ever say anything to me, except after the case had been argued before Judge Drummond you would try and
459 urge him to make a decision?
A. No, sir.
Q. Never said anything else than that to me?
A. No, sir.
Q. You never told me that you would do anything else than try and get Judge Drummond to act on it?
A. I never told you so.
Q. You told me you did try that.
A. You wanted me to go and see him and go out to the place and create an influence, and I told you, to pacify you, I had been out. I never was there, and never saw his house. You were pressing me for money, and I told you, to pacify you, I had gone, but I never did, and I was ashamed to listen to such talk.
Q. Did you, after the case was argued, ask the judge to render his decision?
A. I never did.
Q. You know that I did?
A. You told me you did.
Q. Did you know Judge Drummond was to try it until it was tried?
A. I knew he tried the case in part, but never decided it.
Q. He had it under advisement a year, didn't he?
A. I should think so.
Q. Was it during that year we were trying to get a decision one way or the other?
A. I don't know whether it was at that time or not; I don't remember.
460 Q. You don't remember Judge Drummond's name was mentioned until after the case had been argued and he had it under advisement?
A. It was after we came into his court; I think it was before the trial.
Q. Wasn't you up in the court-room the night it was argued?
A. No, sir.
Q. Wasn't you there during the day?
A. I never heard it argued at all.
Q. Didn't you know it had been argued and submitted?
A. I knew after it was argued; I heard of it.
Q. Didn't you know it was a long time?
A. I know it was a long time.
Q. You and I talked about having Judge Drummond decide the case?
A. Talked about it every day.

Q. I told you I had spoken to Judge Drummond and asked him to render his decision in the case?
A. I think you did after he had the case tried.
Q. You told me you would use your influence?
A. I told you I would like to have it done.
Q. Didn't you say you would go and see him?
A. I don't know but I did, after the case was tried and in his hands.
Q. Didn't you come and urge me to get a decision in the case?
461 A. I don't remember, but I might.
Q. Didn't you apply to Monroe to do something—to see Judge Drummond to decide the case?
A. I suppose I did.
Q. You deny this as your signature to this paper?
A. I have no recollection of signing the paper.
Q. Is that your handwriting or not?
A. I do not think it is.
Q. Do you say it is or is not?
A. I say it is not.
Mr. RAE: Did he say he had brought any influence to bear on the judge?
A. I don't remember what he said.
Q. Say what you remember.
A. I don't remember his saying anything at all about it.
Q. You are sure this was before the argument of the case?
A. Yes, sir.
Mr. DUNLEVY: How do you fix the time?
A. I know it was a long time ago.
Q. When was the case tried?
A. I don't remember; 1877 or 1878.
Q. It was after that?
A. Before that.
Q. It was about 1878 you had the conversation with me?
A. I think so; I am not certain.
Q. As near as you can fix it it was about 1878?
462 A. I know it was before the trial of the case.
Q. I am talking about the year.
A. I don't remember the year.
Q. Have you any data by which you can fix the time?
A. I don't know as I have.
Q. What were you doing at the time?
A. I was doing nothing, I guess.
Q. You think it was about 1878 we had this talk?
A. It would strike me so, but I don't remember the year.
Q. It was not five years before that, was it?
A. I don't think it was. I don't think it was as long as that.
Mr. FULLER: You were perfectly solvent in 1867, were you not?
A. Yes, sir; and in 1870 and 1871. I thought I couldn't be broke up then.

Q. How were you in 1872?
A. I was solvent then.

THOMAS S. DOBBINS.

Subscribed and sworn to before me.

H. W. BISHOP,
Master in Chancery, &c.

463 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COM'RS, Complainant,
vs.
JAMES MORGAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Thursday, the 19th day of February, A. D. 1882.

Present: Mr. Fuller, for complainant; Mr. Leaming, for defendant Morgan; Mr. Dunlevy, for Wm. P. Kerr; Mr. Rae, for Mrs. Phillips.

CORNELIUS PRICE, a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Fuller, and deposes and says as follows:

Q. Please state your name.
A. My name is Cornelius Price.
Q. Were you one of the South Park Commissioners; and, if so, during what period of time?
A. I was South Park Commissioner up to March, 1881.
Q. From what time?
A. Five years and four months. I took the unexpired term of Gage.

464 Q. When did you first hear of any attempted contract or agreement with William P. Kerr in relation to what is known as the Phillips tract?
A. You speak of the attempted contract?
Q. Yes, sir.
A. Some time in the fore part of November, 1879, Judge Dunlevy called at my house; I think he called there four or five nights in succession with what you call the attempted contract—it was in pencil—and read it over to me, and I made some objection, and he came again with some alterations that he said he would make, and finally the last time I told him I didn't think I could agree to any such contract, and the proper place to present it would be to the board. I didn't want to do business outside of the board in a matter of that kind where there was so much money involved. He then requested me to meet him at Mr. Walch's at a subsequent evening, I don't recollect the date; I told him I would and I did. There he presented the same contract to Mr. Walsh and myself for our approval, and I believe I raised some objection, or Walsh did.
Q. Mr. Walsh did?
A. Yes, sir; both of us. I then told him I could not sign such

a contract, and I think Mr. Walsh said he could not
465 agree to it. The next thing I heard of it was when this contract was presented to the board on the 21st of November, 1879; that is the first I saw or heard of the contract. I presume the pencil contract the judge had was similar to this; I could not state from memory whether it was or not.

Q. Similar to the one presented on the 21st of November, 1879?

A. Yes, sir. At the time he presented it to me I knew nothing about this contract being in existence. He made a request of me not to mention it to certain members of the board. He thought he could get Walsh, Sherman, and myself to agree to it, but he didn't want Thompson and Kales, the attorneys, should know anything about it.

Q. He didn't wish Mr. Morgan to be informed about it?

A. He didn't wish Morgan, Cornell, and Kales or Thompson; he mentioned their names.

Q. At the time the proposed contract was presented, which you remember to be the 21st of November, 1879, do you remember whether Mr. Walsh was present?

A. Mr. Walsh was present at the meeting that day.

Q. But at the time?

A. I could not exactly say.

Q. What was done with it?

A. The contract was read before the board, and I think I
466 moved to have it laid over, so I could look into it, and it was laid over.

Q. Did you ever agree to that contract?

A. I did not.

Q. Was it ever passed upon by the board as a board while you were a member of it?

A. It was not.

Q. Do you remember a resolution passed at the meeting of November 21st, 1879, ordering the warrants to the amount of $90,000 to issue?

A. Yes, sir; I remember that.

Q. What was that resolution adopted for; that is to say, for what was the $90,000 to be paid?

A. After this contract was laid over, Col. Thompson got up before the board and said there was $21,000 needed to take care of the Dobbins interest, to get Mrs. Dobbins' deed, and it was needed right away; and then, I think, some member of the board then said there was some other matters wanted to be attended to the amount of $90,000, and Col. Thompson was requested to draw the resolution, which he did, and it was presented to the board.

Q. He drew the resolution which was adopted?

A. Yes, sir.

Q. What was the $21,000 to be paid for?

A. It was to secure the Dobbins interest in this land. If we did not pass it at that time he was afraid we could not get it, because the amount must be paid within a day or two.

Q. Do you remember whether it was stated to whom the amount was paid?

467 A. I don't think he did, but that the money was needed for that purpose. I don't think there was any statement to *whom.*

Q. What did you understand the Dobbins interest to be?

A. I always understood it to be a one-quarter interest.

Q. Of the tract?

A. Of the tract. I will state, before I go any further, that when Judge Dunlevy called at my house I raised that question.

Q. What question?

A. Of the amount of land that was embraced in the Dobbins interest in that tract. I told him I understood it was a quarter interest, and the judge said he thought probably they could get their rebate of $30,000. It was his opinion that they could get this, giving a certain amount of land, and getting a rebate of $30,000 to make up a quarter of the tract.

Q. What did you understand the expenditure of $90,000 would secure?

Objected to by Mr. Dunlevy. The witness should be asked what was said by the board, and by whom.

Mr. THOMPSON: I object to the question. The resolution speaks for itself, and I object to the witness giving the construction he places upon it.

A. As near as I could understand from their talk, of course I knew nothing about this matter until it was presented to the board,

468 there were some securities in the bank. We had raised some money for Judge Dunlevy in some way; it was to take up those securities, aside from the $21,000; it was to go direct to Mrs. Dobbins. The next day after the passage of the resolution I called over to the bank when the bank opened, and asked Mr. Schneider if the park board had been borrowing any money there. He said he believed some of the members had borrowed some money; that is, they had become responsible, as far as their word would go, for a certain amount of money they had raised for Judge Dunlevy. I asked him if he would allow me to look at the securities. He brought them forward and I looked them over. That is the first I ever had known there had been any money raised for Judge Dunlevy in this matter of land.

Q. What were those securities?

A. There was one $30,225 note of L. Curry, dated May 15th, and one of W. K. Nixon $30,325, about the same date. I understood those notes were secured by the Dobbins notes as collateral. I don't remember who they were payable to. I then said to Mr. Schneider it was a singular matter; it looked very singular to me that any park commissioner should undertake to raise money to be paid out of park funds when we had put $300,000 in his hands, as treasurer. He said Mr. Thompson, and, I think, Mr. Morgan and Mr. Walsh, came there and got this money, and said it would be all right. He then

469 asked me if the thing had not been acted on in the board. I told him no; he told me he supposed it had been passed by the board, authorizing those parties to raise this money. I told him no; there was no such resolution ever passed by the board. He seemed to be quite excited and wanted to know how he was going to get his money. I told him the night before they had passed a resolution to pay him. I supposed the money voted was to take up the securities in order to pay him.

Q. Did anything pass between you and him about the $21,000 at that time?

A. No, sir.

Q. Did the securities shown to you include any $21,000 notes?

A. I am not certain about that. These two notes I saw I looked at pretty sharp, because I thought they were pretty large and heavy notes for light men to give.

Q. You say you understood the $90,000 was voted to secure the Dobbins interest?

A. That was my understanding.

Q. From whom did you understand it—what was said?

A. From what was said I inferred the $21,000 that was asked for was to go directly to Mrs. Dobbins.

Q. Said by whom?

A. By Col. Thompson in his remarks before he drew the resolution.

Q. What about the balance of the $90,000?

470 A. Some one said there was something in the bank, some note that had to be attended to; of course I knew nothing about it. I asked to be excused from voting, and did not vote on the matter; didn't know enough about the matter to vote on it.

Q. Did you countersign the warrant?

A. I did.

Q. Were you auditor at the time?

A. I was auditor; I think I amended Mr. Thompson's resolution, and had the auditor directed to sign the warrant.

Q. Was the $90,000 drawn out in one sum or two?

A. In two.

Q. What were the dates of the warrants?

A. $82,800, November 29, 1879, and $7,200, February 26, 1880.

Q. Did anything pass at the time the warrant of February 26, 1880, in reference to what it was drawn for between you and the commissioners?

A. Between myself and Col. Thompson. He brought the warrant to me, and I objected to signing it. Mr. Harman and myself were sitting at a table similar to this; Col. Thompson came in, bringing the warrant; I objected to signing it; he said it was a part of the $90,000; I was directed to sign. I told him that the matter looked to me as if it was not exactly right; it was paying a big price for a bankrupt's deed of property, for a man that did'nt own it himself, and his wife owned it, and

471 Col. Thompson said it was necessary to have it to make a perfect title; I then asked him this question, if he had got a

quit-claim deed from Mrs. Phillips of her dower in this tract; he remarked to me that deed would make a perfect title; I understood from Mr. Thompson she had a dower there in this tract; I didn't know but what it was necessary, and asked him that question; he said to me this would give the park a perfect title to this property; then I didn't sign it; I said to him, I think, I objected that the president was the man to draw it; I think he went to Mr. Morgan and Mr. Walsh and came back with it, and I signed it.

Q. Why did you object to paying $7,200 for a bankrupt's title; what do you mean by that?

A. I understood when Dobbins went into bankruptcy this was sold as part of his estate, and bought in by some person who held the bankrupt's deed to it; and this was to obtain that deed, the $7,200.

Q. Who informed you the $7,200 was to obtain the deed?

A. Col. Thompson.

Q. At this interview?

A. Yes; I knew nothing about it until it was presented to me there.

Q. When you said Col. Thompson said it made a perfect title, a perfect title to what?

A. The Dobbins' interest in the property.

472 Q. When the resolution of November 21, 1879, was passed there was no intention manifested, was there, to ratify an alleged contract with W. P. Kerr?

A. I don't think it was, because the motion to lay over the contract to some future meeting was passed by the board before this resolution came up.

Cross-examination by Mr. LEAMING:

Q. At the time you examined these securities at the bank, or the two securities you have named, amounting to some $60,000, were you not shown a note of J. I. Bennett to make it up to the amount of the warrant you signed?

A. If I am not mistaken, I think there was a note of Bennett in among the papers.

Q. You did sign the warrant for $82,800?

A. Yes.

Q. That was after you had been to the bank?

A. After I went to the bank.

Q. Are you sure of this contract, or proposed contract, being presented to that meeting for the first time?

A. Yes; I know it was the first time; I was in the board.

Q. Who read it?

A. Col. Thompson read it.

Q. At that meeting did you ask for a copy of it to examine it?

A. I did not.

Q. Didn't you ask that it might be laid over, that you might examine it?

473 A. Yes; but didn't ask for any copy.

Q. Were you presented with a copy of it?

A. No, sir; I sent the boy John two or three times after it, and Col. Thompson sent word back he would rather I would come up there; that he did not want to send the contract around; so I went up and he told me if a copy would answer as well he had the original draft, and would let me have that, but did not want to let the contract go out, and presented it to me in his office.

Q. Within a day or two of that time?

A. About three or four days of it.

Q. Have you compared the draft that Col. Thompson gave you with the copy that was afterwards furnished by the commission?

A. Yes; I examined them both, I think.

Q. Did they agree?

A. Yes; I think they agreed. I done it to see how the two agreed.

Q. What commissioner at that meeting, when the contract was presented and read, objected to the contract; what commissioner objected to it at that time?

A. I objected to it for one.

Q. Did you hear any other commissioner object to it?

A. I heard no other objection.

Q. Who were present?

A. I think the full board, if I am not mistaken.

474 Q. Did you ever have any conversation with John R. Walsh, one of the South Park Commissioners, at that meeting, with reference to that contract?

A. I don't know but what I did have one or two conversations with him.

Q. What was the object?

A. To talk the matter over and see if we agreed on the contract.

Q. Did you agree as to the course to be taken at your first conversation after that meeting?

A. No; we didn't come to any agreement at all.

Q. Did he express himself as opposed to the contract, or in favor of it, at the first conversation you had with him after this meeting?

A. No; I don't think that matter came up in our conversation; we were discussing the point whether it was proper and right to enter into such a contract; I don't think we came to any conclusion.

Q. Did he discuss it that it was a good one, or that it was not?

A. He said sometimes that he thought probably it would be a good contract, and then again he didn't. He said he hadn't fully made up his mind. I think I had two conversations with Mr. Walsh on the subject; I had another conversation after that with him.

Q. When was the first time he told you he had made up
475 his mind to oppose that contract?

A. It was some time before the date it was presented to the board, in the winter of 1880. He told me one day on the street he had made up his mind that he would vote against the contract.

Q. Now you say at the time of signing this $7,200 warrant Col. Thompson brought the warrant to you?

A. Yes.

Q. Wasn't the warrant in the warrant book at the time you speak of?

A. I sat at the table; Col. Thompson brought it to me and Harmon, who was at the table.

Q. Did Col. Thompson bring the warrant back to you?

A. It was not in the book; it was cut out; he brought the warrant separate from the book.

Q. Are you sure of that?

A. I am positive.

Q. And Col. Thompson had it in his possession?

A. I don't think Harmon hardly ever presented a warrant without it was torn from the book.

Q. Do you mean to say Col. Thompson had the warrant in his possession prior to your signing it?

A. He brought it to me, and I countersigned it at the table after he went down to see Walsh and Morgan. At last he came
476 back and said he had seen them, and I learned afterwards Walsh said he came down and he sent word up.

Q. Do you remember of saying at that time you did not know about signing—whether you ought to sign that warrant for $7,200, and that you would like to know whether Mr. Walsh approved of it before you signed it?

A. I said I would not sign it, and Col. Thompson said it was a part of the $90,000 that was to be paid out—that we voted to pay out.

Q. Did you request before you signed that you should know from Mr. Walsh whether he approved of it?

A. Mr. Walsh and Mr. Morgan.

Q. Did you say anything to Col. Thompson about Mr. Morgan?

A. Yes; I think I stated to him that Morgan was the proper person to present that certificate to me—that warrant.

Q. How long was Col. Thompson gone from your presence, after he went out to see, as you say, Mr. Walsh and Mr. Morgan, before he returned and told you he had seen either of those gentlemen?

A. About half an hour.

Q. Did you wait there for him to return?

A. I think I waited, if I am not mistaken.

Q. Now are you positive that Mr. Morgan's name was mentioned as one of the parties necessary to consult?

477 A. I think I am positive of that fact. What makes me more positive is because Morgan was to draw the money. Morgan, under the resolution, as president of the board, was directed to draw so much money—$90,000.

Q. Wasn't that warrant left with the secretary after you signed it?

A. No, sir; Thompson took the warrant. The secretary was present when I had this talk with him, when I objected to signing it; he was present when I asked the question as regards the title, and he understood it the same as I all along.

Q. Did you understand at that meeting, when the contract was presented and read, it was the intention of the members, or was

there any intention expressed by the members, to ratify that contract at that meeting?

A. I won't say unanimous; but I think the contract would have been passed at that meeting if I had not made objection.

Q. Did you hear anything at that meeting expressed, any objection to it other than yourself?

A. I did not.

Q. Did you understand at that meeting, at which that resolution was passed, that the resolution was the outgrowth and became necessary from the fact that the board had concluded to lay over further consideration of the contract itself?

A. You mean the resolution for the $90,000?

478 Q. Yes.

A. I think it was stated to the board it was necessary to have the money either that day or the next day.

Q. There was no statement about the $90,000 until after the conclusion to lay over the consideration of the contract, was there?

A. I moved to lay it over, and it was laid over; then you made this statement I have spoken of.

Q. Until that was done there was no mention of any resolution to pay money?

A. No, sir; only what the contract called for.

Cross-examination by Mr. DUNLEVY:

[Q.] I will ask you only one question; you say you met me at Mr. Walsh's house one evening. Was that at Mr. Walsh's request or mine?

A. Your request.

Q. Where did I see you?

A. At my house.

Q. State whether it was Walsh's or my request.

A. Your request.

Q. You did come in accordance with it?

A. Yes, sir.

Q. How long was that before this contract was laid before the board by Mr. Thompson? How many days, two or three?

A. It may have been two or three or a week.

Q. What was the object of your meeting at Mr. Walsh's

479 house? What did I tell you was the object of the meeting?

A. After being at my house I think I told you there was no use of you and I meeting any more, because we could not agree upon a contract, and you then made a request of me to meet at Walsh's on a certain night. I told you I would, and I met you there.

Q. Refresh you memory. Had I said anything to you about the contract—about its being reduced to terms—until I met you at Mr. Walsh's house that night?

A. I don't think you told me either at my house or Walsh's that it had been reduced to terms. You had a pencil contract at both places, and was trying to work up, as I understood, a contract we would sign.

Q. Did I show you anything of that kind at your own house?

A. You showed me a pencil contract at my house.

Q. It was the night before we met at Walsh's?

A. I think it was two or three nights after we met at Walsh's. I think the last night we met was on Friday night. I went to a Democratic convention that met on Saturday night, and I think it was on Monday.

Q. When I asked you—if I did ask you—to meet at Mr. Walsh's,
480 didn't I show you either a written or pencil memorandum of a contract, and tell you that it had been agreed to by Sherman, and by Morgan, and by Walsh, and I wanted you to meet me at Walsh's house to go over it and see whether you would agree to it also?

A. No, sir; at my house you requested me not to say anything to Morgan or Cornell or the attorneys, as you didn't want Cornell, Thompson, Morgan, and Kales to know anything about this matter.

Q. Let me refresh your memory.

A. My memory is as fresh as the day I met you.

Q. I will ask you whether I didn't say I didn't want you to mention it to Cornell or Kales.

A. And Thompson or Morgan. You used pretty strong epithets; it is not necessary to quote your exact language.

Q. Can you give about the day we met together? You say I was at your house three or four times.

A. You was there three or four times.

Q. Will you state after you met Walsh and myself at Walsh's house that night I did not have a full copy of what I explained had been agreed to by some members of the board and go over it sentence by sentence and word by word.

A. You read the contract—I think it was in pencil—to Mr. Walsh and myself.

The counsel handed the witness a copy of the contract attached to Morgan's answer.

481 A. This contract was made and signed May 14th, and this was along in November. I don't think that was the contract. I think you had a pencil contract.

Q. Didn't you then state that the paper I showed you seemed to be signed in May and this is about the 1st of November?

A. I will refresh your memory. You presented that to the board; after Russell came in I asked you to allow me to look at the contract.

Q. I am talking about what occurred at the house.

A. I asked you to let me look at the contract, and you showed it to me; I remarked it was made in May—not at Walsh's, but at the park board. I don't think that was the contract. I don't think it was any such kind of paper.

Q. Don't you recognize that handwriting?

A. No, sir.

Q. Did I that night, in your and Walsh's presence, go over the

contract which you say was in pencil—go over the contract sentence by sentence?

A. You read it over to us, I think.

Q. Didn't I explain each paragraph and sentence?

A. It was a matter of discussion between you and I.

Q. We met there to understand the contract. Didn't we stay there until twelve or one o'clock?

482 A. No, sir; not as late as that. I think it was about ten or eleven o'clock.

Q. Wasn't the whole object of that meeting to inform you of the terms of the contract that had been substantially agreed to?

A. I understand that meeting was to inform Mr. Walsh and myself, because we both agreed the contract didn't suit us at that meeting.

Q. You didn't say so in my presence.

A. I recollect it well.

Q. Was it not substantially the same as the contract set forth in Morgan's answer?

A. I could not say. This is the only contract I ever saw and read, that Col. Thompson gave me.

Q. Is that a copy of the contract in Morgan's answer?

A. I could not tell you; it is the original draft, as I understand it, of the contract presented to the board.

Q. Don't you remember I told you that night the contract was in my wife's handwriting?

A. I don't know that any contract had been named or any members had talked about a contract, until you came to see me, and then you made a particular request of me not to mention it.

Q. Was not that meeting between me and the park board on written notice if the park — did not carry out the contract Kerr would consider himself discharged?

483 A. I think there was a notice to that effect.

Q. That was in April or May, 1880?

A. It was in May, after Russel was park commissioner.

Q. I then met the park board, under written notice; — I would meet them at the next regular meeting, and unless they saw proper to carry out and sanction the contract, Kerr would be discharged from it.

A. I don't know whether it was that; there was a threat accompanying it; either he would drop it or compel us to fulfill the agreement.

Q. There was a written notice before the board?

A. Yes, sir.

Q. Didn't I put it in writing before the board?

A. There was a notice you would meet us at a certain time; I think we held a special meeting.

Q. Didn't the notice say what Kerr would require at that meeting?

A. I think the notice was, if he required anything, he required us to fulfill our agreement.

Q. Do you remember whether there was a condition attached—if you did not, he would consider himself discharged?

A. I don't know about that; the whole tone of the notice was, if we didn't do that there would be something else done on
484 your part.

Cross-examination by Mr. RAE.

Q. At the time Judge Dunlevy called on you to discuss this contract, and requested you not to mention it to some of the Park Commissioners, did he express to you any desire to get your name upon it?

A. He expressed a desire that he wanted Mr. Sherman, Walsh, and myself to agree to a contract, or some contract, that he presented, and he thought if we would agree to that it would go through the board without the knowledge of these other parties; didn't want them to know anything about it.

Q. Did he, at that time or any time after you refused to go into the contract, make any suggestion that he would rather give $10,000, or any other sum, than not to have your name on the contract?

A. No, sir.

Q. Were you ever approached by any one to induce you to sign the contract?

A. Nobody but Col. Thompson. We had a meeting; I think he had me to remain after the board adjourned, and we had a long talk over the contract matter in the secretary's room; that is the only time anybody ever approached me.

Q. Did the Col. urge you to accede to its terms?

A. He wanted to enlighten me on the contract, and show me the benefits the park board would derive from it.

Q. Pressed you to sign it?

485 A. He said he would like to have me sign it; he would rather have me vote for it than any member of the board.

Q. You have never heard of any offer being made, directly or indirectly, to you or any member of your family, to sign this?

A. There has never been any offer made to me or my family.

Q. Never heard of any such thing, did you?

A. No, sir.

Q. Did you ever hear of an offer made by Dobbins and Henry S. Monroe, or Judge E. S. Williams, or any of them, to sell the Dobbins interest for $65,000?

A. I think Dobbins and Monroe came before the board at one time and offered to sell it to the board. I think the proposition was, they would rebate $10,000, and would leave $30,000 of the money back until the question of title was settled, or something of that kind.

Q. Do you remember whether the amount, the $65,000 they asked for Mrs. Dobbins' interest, — they would clear up the title?

A. Yes, sir; they said they would if the ground did not hold out—one-fourth of the interest—they would leave a certain amount back until they ascertained the fact, I think.

Q. I am now speaking about the amount for the land; do you remember their offering to give you a good title, as far as they were able to, for $65,000?

A. I couldn't tell you whether it was exactly $65,000.

Q. Was it about that sum?

A. I think it was.

486 Q. Didn't you point out to Judge Dunlevy the impropriety of the board delegating this authority to him to carry on this litigation on the Phillips tract?

A. I talked to him about the impropriety of going round to members and getting them to agree to a contract which should be brought before the board. I told him the proper place for a contract was before the board; I did not believe in doing business outside with individual members; the board was the proper place to present the question.

Q. You didn't point out any defects in the contract itself?

A. I objected to it in a great many ways.

Q. Do you now remember what your objections were?

A. One of my objections was, I was a member of the park board, and my carrying this contract through it amounted to the abdication, so far as I was concerned, and I was not ready to abdicate in favor of Thompson and Dunlevy; I thought we were capable of doing our own business. I also objected to entering into a contract to or making a contract with Judge Dunlevy for the whole tract to Mr. Kerr, as I stated, I think to the judge and Col. Thompson. The court had decreed 80 acres to Mrs. Phillips, and if Mr. and Mrs. Phillips had any title to the 80 we had a contract with Phillips for $800 an acre, and we should not pay $3,000 an acre where we had a contract for $800.

Cross-examination by Mr. LEAMING:

Q. Do you mean that Col. Thompson used, or intimated, or held out to you any idea of using any influence with you?

487 A. Nothing more than moral suasion.

Q. Was the conversation with you by Col. Thompson any more than simply an explanation of the contract, giving you his views of it?

A. Yes; and urging me to sign the contract, feeling it was a good one.

Q. Good for whom?

A. Good for the park commissioners, of course; I did not say it was good for anybody else; I did not mean to intimate he had used any undue influence at all.

Q. Did you ever see the contract that you speak of, between Phillips and the commission?

A. I did not; I was thinking whether or not the contract was not presented at the investigation by the Legislature, but I don't think it was; I think I have seen a copyof the contract, if I am not mistaken, what purported to be a copy.

Mr. RAE: Wasn't you there when Judge Dunlevy read once what purported to be a copy of the contract?

Q. I think Judge Dunlevy presented a paper.

Q. An imaginary copy?

A. Yes, sir; what purported to be a copy; but Judge Beckwith denounced it as bogus.

Q. Judge Dunlevy admitted it was not a real copy?

A. Yes; he admitted that the signature, it was Ayer & Kales, was not their writing.

Mr. LEAMING: Did you ever make inquiries of the secretary of the commission whether there was in the possession of the commission a copy; have you ever inquired whether the commission had a copy of the contract?

488 A. I don't think I ever inquired; I think if I saw a copy, Ayer & Kales might have shown it to me.

Mr. DUNLEVY: There was money paid to Phillips by the park commission on account of a supposed agreement between them?

A. I believe there was some money paid out.

Q. Forty or fifty of sixty thousand dollars?

A. I don't think there was as much as that. There was a good deal of money paid out before I came into the board.

Q. And some paid out after you came in?

A. Very little; we refused to pay after I came in.

Q. Paid some after you came in?

A. I think there was some paid after I came into the board.

Q. For what purpose was that paid on the contract with Phillips—to purchase his interest in this land?

A. Yes; I suppose so.

Q. You voted for the payment of some of the money?

A. I don't know whether it ever came up before the board or not; whether it was paid by resolution of the board or under the advice of the attorneys I cannot tell.

Q. You say you never saw the contract with Phillips on behalf of the park board for the purchase of this land; you don't know the commission ever had any contract, and yet you voted money to be paid to Phillips on account of the supposed contract; is that so?

A. Mr. Kales, I guess, had a copy of the contract; I think he read it to me in his office, Kales & Ayer, shortly after I came into the room.

489 Q. Then you voted money at the park treasury to Phillips on account of a copy of a contract shown you by Mr. Kales?

A. If there was any money voted to Phillips on the contract it was voted in that way, I presume.

Q. Don't you know it was over $40,000?

A. No, sir; I don't think that there was that much voted for Phillips. I know he came for a thousand dollars and we refused to give it to him.

Q. He got $3,000 a short time before that?

A. I don't know how much he got.

Q. You don't know as a member of the park board whether the park board had any contract with Phillips for the purchase of the land at $800 an acre?

A. Nothing more than what the attorneys and Judge Beckwith and you stated at the meeting. You read a contract, and Judge

Beckwith said there was such a contract and he had drawn it, but he said the one that you had was bogus.

Q. Give the terms of the contract which you say Kales had.

A. I can't give it; it is a good while ago.

Q. It was a short one and was in Kales' hand, wasn't it?

A. It was a short one in your hands.

Q. Was that a substantial copy of the contract between the South Park Commissioners and Phillips?

A. I will state what I understood the contract to be. It was a contract whereby Phillips agreed to deed to the park commissioners all that tract of land for $800 an acre, all we laid claim to.
490 The park commissioners was to defend and furnish the money to defend, to be taken out of the contract price; that is the way I understood the contract to be; that is as near as I can get at it.

Q. Under that contract you say the park commissioners were to furnish the litigation on Phillips' behalf against Kerr out from the purchase-money of $800 an acre of the money they should expend in litigating the title?

A. That is the way I understood it.

Mr. RAE: Wasn't it rather to clear the title?

A. To clear the title, that is all.

Mr. DUNLEVY: You speak of a supposed copy of the contract presented to the legislative investigating committee. Wasn't that precisely what you stated was in Kales' hands?

A. This was a long time ago; I don't know.

Q. Wasn't it precisely the same in substance as you have just stated?

A. Judge Beckwith, under oath, stated what the contract was; he said there was two contracts.

Q. State whether that contract presented to the investigating committee was not exactly what you have stated the contract in Mr. Kales' hands was?

A. I don't know as I could tell you a word in the contract.

Q. Do you say there was anything substantially different in the copy presented to the legislative committee than that in Kales' hands?

A. I couldn't tell you.

Q. You have stated, as near as you can, the substance of
491 the contract you saw in Mr. Kales' hands?

A. I had no interest in the contract to know what it was only as a park commissioner.

Q. You have stated the substance of the contract between Phillips and the park commissioners that you saw in Kales' hands?

A. I told you the substance as I understood it, not as I saw it in Kales' hands; it had been talked over, the substance told me about fifty times after I came into the board.

Q. By Kales?

A. By the park commissioners and by Bowen, a party, and by Sidway.

Q. You saw a copy in Kales' hands?
A. Yes.
Q. You have stated the substance so far as you know?
A. I stated the substance as I understand the contract to be, the way I understood the matter; don't mix me up with any contract Kales had.

Redirect examination:

Q. At the meeting with Mr. Walsh and Dunlevy at Mr. Walsh's house, at which you were present, did Mr. Walsh assent to the document which Dunlevy had?
A. No, sir, he did not; objected to it.
Q. I mean during the conversation between you and Mr. Walsh and Dunlevy when he was present?
A. I understand that.
Q. You so understand my question, do you?
A. Yes.
492 Q. Was this alleged contract after it was put over on the 21st of November brought up again before the board; and, if so, when?
A. The contract was never brought up before the board after the 21st; some time, I think it was, in March or February, the last meeting Mr. Morgan met with the park board, Col. Thompson brought in the deeds and submitted them to the board. He brought in the deeds and stated he had submitted them to Mr. Kales and Mr. Kales had examined them and said they were regular in form, and right. I wanted the matter laid over a week; there was some talk about it, and finally Sherman came to my rescue and made a motion to have five copies printed so each member could read it; he said he had read the contract, and I appeared to be the only one who had not examined it. It was so ordered that copies should be printed and delivered, and they were. Mr. Morgan never met with the board again. The contract did not go through.
Q. That was the last meeting Morgan attended as a commissioner?
A. Yes, that was the last meeting.
Q. You say you had two conversations with Walsh about that contract after this meeting at his house?
A. No; I will not say after the meeting at the house; after the meeting of the board.
Q. About when?
493 A. I think I called on Mr. Walsh four or five days after; I was considerably exercised over the matter.
Q. Four or five days after the 21st?
A. I think so.
Q. That would be the first conversation you had with him, would it?
A. Yes.
Q. And then one after that?
A. After that I was passing up the street and Walsh called me,

and I went to the side of the street he was, and we walked up the street and talked the thing over.

Q. That was the second time?

A. Second and last time.

Q. What passed the first time?

A. We merely talked the matter over, I laid the matter, before Walsh in the way in which it was objectionable, or the objectionable points, and I think he said he would think the matter, &c.

Q. How long after that was it you saw him the second time?

A. It might have been two weeks.

Q. Then what did he ask?

A. I recollect it distinctly, because I said to him, you and I have lived in this town a good while and are pretty well known, and I don't think we can afford to sign that contract.

Q. That was the second time?

A. Yes.

Q. What did he answer to that?

A. He said he did not propose to vote for the contract.

Adjourned to 12 o'clock a. m., Feb'y. 10th.

CORNELIUS PRICE.

Subscribed & sworn to before me.

H. W. BISHOP,
Master in Ch'y Cir. C't U. S., Nor. Dist. of Illinois.

494 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COM'RS, Complainant,

vs.

JAMES MORGAN *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 10th day of February, A. D. 1881.

Present: Mr. Fuller, for complainant; Mr. Dunlevy, for defendant Kerr.

H. W. HARMON, a witness on behalf of the complainant, being first duly sworn, was further examined in chief by Mr. ——, and deposes and says as follows:

Mr. FULLER: I was requested by counsel for Mr. Morgan to notify you to bring in copies of the receipts given for the warrant for $82,800 and the warrant for $7,200; have you done so?

A. Yes. I have those copies here.

[Q.] Please hand them to the master to be annexed to your deposition and marked "Exhibit A." I notice that the receipt of November 29, 1879, for the $82,800 warrant contains within it, after the words "for account of land," the words "account of securities on land. H. H. N." In whose handwriting is the latter?

A. That is Mr. Nash's handwriting, of the Bank of Illinois.

Q. Under what circumstances were those words written in?
A. At the request of Mr. Morgan.
Q. At the office of the South Park Commissioners?
A. Yes.
495 Q. Mr. Nash is the cashier of the bank?
A. Yes.
Q. As to the $7,200 warrant, under whose direction was that receipt made out?
A. Mr. Morgan's direction, at the park office.
Q. Who was there at the time the receipt was made out; was he?
A. Yes.
Q. Mr. Foster has produced a plan made by Olmstead & Vaux, containing the premises in question, which he refers to as having been made before the fire; state what you know in relation to that.
A. That map was turned over to me by J. H. Sams, as engineer of the park, as either the original working plan, made by Olmstead & Vaux before the fire, or a copy of the original map made before the fire.
Q. That is all you know about it?
A. That is all I know about it; it was transferred by me to our engineer.
Q. Some question was put to you in relation to the attorneys of the South Park Commissioners as a corporation; state whether you have found any record as to who the attorneys were during the period inquired of, and, if so, please produce it.
A. I have got a certified copy of a resolution, which I will annex to my deposition, marked "Exhibit B."
Q. How long did the gentlemen named in the resolution continue to act as such attorneys under the resolution?
A. Until March, 1880.
Q. Can you state the time in March?
A. Whenever the annual election occurred; my recollection would be it was about the first or second week in March.
Q. You have been requested to make out an account of money
496 paid on account of or under an alleged contract with Charles B. Phillips. I hereby direct you not to produce such account until the question whether it is competent and proper evidence shall have been passed upon by the master and by the court.
The master is requested by the counsel to certify the question as to the production of the paper called for to the judge of the circuit court for his decision.

H. W. HARMON.

Subscribed & sworn to before me, H. W. Bishop, master in chancery of the circuit court of the U. S. for the northern district of Illinois.

Mr. Tuller here states that he has concluded the examination on behalf of the South Park Commissioners before the master, with the exception of any examination rendered necessary upon the question raised in regard to the account called for from the witness Harmon.

Copy.

No. 4782. $82,800.00.

Received from the secretary of the South Park Commissioners a warrant, numbered as above, on the treasurer, for eighty-two thousand and eight hundred dollars, for ac. of land (on account of securities on land).

Nov. 29th, 1879.

H. H. N.
THE NATIONAL BANK OF ILLINOIS.
By H. H. NASH, *Cashier.*

Copy.

No. 5035. $7,200.00.

Received from the secretary of the South Park Commission a warrant, numbered as above, on the treasurer, for seventy-two hundred dollars, for ac. securities on land S. ½ fr'l sec. 13, 38, 14, 497 as per res'l'n Nov. 21, '79, to be transferred by me on ac. of such purchase.

2, 26, 1880.

JAMES MORGAN, *Pres't.*

STATE OF ILLINOIS, }
County of Cook, } *ss:*

South Park Commission:

[I,] Henry W. Harmon, secretary of the commission aforesaid and custodian of its records and files, do certify that the following is a true copy of the resolution adopted by the said commission on the first day of Mar., A. D. 1877.

On motion of Commissioner Price the following resolution was adopted:

Resolved, That Francis H. Kales and Richard L. Thompson be, and are hereby, declared to be the regular attorneys of the South Park Commission, with a monthly retainer of one hundred dollars each, until otherwise ordered by the board.

In testimony whereof I have hereunto set my hand and the seal of the said commission this tenth day of February, A. D. 1882.

HENRY W. HARMON,
Sec'y of the South Park Commission.

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE SOUTH PARK COM'RS, Complainant,

vs.

W. P. KERR *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chan-
498 cery of said court, Tuesday, the 14th day of March, A. D. 1882.

Present: Mr. Leaming.

JOHN C. DUNLEVY, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Leaming, and deposes and says as follows:

Q. Please state your name, age, residence, and occupation.

A. My name is John C. Dunlevy; age, 58 years; occupation, lawyer; residence, Chicago.

Q. Are you the John C. Dunlevy mentioned in the pleadings and evidence in this case?

A. I am.

Q. Are you the party whose name is subscribed to the paper marked Ex. A to Morgan's answer?

A. I am a party to that agreement as attorney-in fact for William P. Kerr.

Q. Will you please state what, if any, agreement you had with James Morgan, then president of the South Park Commissioners, in reference to the sum of about $90,000 received by you about May, 1879, from the National Bank of Illinois?

A. Prior to getting notes discounted at the bank in May, 1879, I had come to a full and perfect agreement with Mr. Morgan, Mr. Walsh, and Mr. Sherman as to the terms of settlement and compromise of the litigation between Kerr and the South Park Commissioners, which terms and agreement are set out in Ex. A to Morgan's answer. One of the conditions or provisions of that agreement was that the park commissioners might or should pay money or advance money upon the Dobbins notes, those notes then being the property of William P. Kerr, but being in my hands for collection.

As there was no meeting of the board, and would not be for
499 some time, Mr. Walsh, Mr. Morgan, and Mr. Thompson, who was acting for them, told me if I wanted any money on the Dobbins notes to go to the National Bank of Illinois, make 30 or 60 day paper of any kind to the amount of $60,000, deposit the Dobbins notes as collateral security to the notes I might offer to the bank for discount, and the bank would discount them for me, and that the park board, when they should meet and approve the contract, would take care of and take up the notes I might give to the National Bank of Illinois, with the agreement and understanding that they would take them up under that clause of the contract then agreed upon between those three persons and myself, which provided they should or might pay money upon the Dobbins notes to the holder

thereof, and be entitled to credit for the amount they might so pay on the Dobbins notes for so much purchase-money paid to Kerr on his interest in the south half of fractional section 13 in the park. I understood before I went to the bank that those three gentlemen—Mr. Walsh told me himself that he, for one, had been to the bank and told them to discount any paper I might bring to the extent of $60,000 with the Dobbins notes as collateral. I thereupon took two notes—one of W. K. Nixon for $30,200, and one of L. W. Curry for $30,300—made by them payable to the National Bank of Illinois. Attached to each of those notes was one of the Dobbins notes as collateral security, accompanied by power of attorney to the bank to sell the Dobbins collateral notes if the principal notes were not paid up at maturity. I went to the bank; I went, I think, alone. The president, Mr. Schneider, and, I think, the cashier, Mr. Nash, at that time told me an arrangement
500 had been made, and they discounted the notes without any further question upon my part, or asking anything about it. That was all done with the express understanding and agreement between Mr. Thompson, Mr. Morgan, Mr. Walsh, and, I think, Mr. Sherman, upon one side, and myself upon the other, that, in the event the park commissioners as a board should not carry out this contract, or if for any reason it should fail to be adopted, then any money they might advance to take up the notes, which the bank had discounted, should stand as so much advanced payment to Kerr on the amount he might ultimately be entitled to receive for his interest in this land, according to the terms of the decree entered by Judge Harlan in the case of Kerr *vs.* The South Park Commissioners, and should bear 6 per cent. interest from the date the park board should so take up the paper from the bank. As to the $30,000 making the $90,000 referred to in question, under a clause in the contract we had then agreed upon (no one of us had the slightest doubt but what it would be carried out), in which I obligated myself to take up the outstanding title and perfect the title to this land in the park commissioners, I found I could buy the Dobbins equity in the undivided one-fourth of this land and get the title from Dobbins, assignee in bankruptcy, and the receiver of Dobbins, R. E. Jenkins, in the United States court, and I thereupon, under the above clause and contract, called upon Mr. Morgan to aid me
501 in raising money to do this. By an arrangement with him, Mr. Bennett gave his note to the National Bank of Illinois for some twenty-one or twenty-two thousand dollars, which was discounted by the bank, and they gave me $7,200, making up the $90,000 altogether, and I bought the Dobbins title for Kerr, in order to enable him to carry out his obligation under this contract, or upon failure thereof to hold it for his own use. The whole of the $90,000, or rather $82,800, was gotten from the bank under the original arrangement made by the bank with these three men, and — agreement with me to do so. The $82,800 was paid to the bank by the South Park Commissioners, and $7,200 was paid to me by the South Park Commissioners by their warrant, which made up the $90,000.

Q. In case the agreement, which was proposed to be made and reduced to writing, should not be adopted by the South Park Commissioners, what agreement was there with regard to the entire sum which you had received?

A. The agreement was at the beginning, and all the time during the summer & fall of 1879, that if the board should fail to adopt the contract, then the $90,000, or any sum they may have advanced in view of its being adopted, should stand as an advanced payment for his whole interest in this land, and they should credit themselves on the purchase-money, and he, Kerr, be charged with the amount as received in part payment for his interest in the whole half section,
with 6 per cent. interest from the date they should take up
502 these securities, or pay any money under this proposed contract. As I deposited these Dobbins notes as collateral security with the bank — some $10,000 less than they were worth, I required an agreement from these parties, which they gave me verbally, that under no circumstances should they permit those collateral securities to be sold, and that they should take care of the notes with the collaterals.

THURSDAY, *March 16th*, 1882.

Present: Mr. Fuller and Mr. Thompson and Mr. Dunlevy.

Cross-examination by Mr. FULLER:

Q Is the foregoing all the testimony that you desire to give in this case?

A. It is.

JNO. C. DUNLEVY.

Subscribed and sworn to before me this 16th day of March, 1882.
H. W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

(Endorsed:) Filed June 10, 1882. W. H. Bradley, clerk.

503 There was also introduced on behalf of the defendant Kerr the record in the case of Mary C. Dobbins *vs.* William P. Kerr on the chancery side of the United States circuit court as follows, to wit:

Transcript from Circuit Court of Cook County, Ill's.

UNITED STATES OF AMERICA, } ss:
State of Illinois, Cook County, }

Pleas before the Honorable E. S. Williams, one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the seventeenth day) of September, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the one hundred and second.

Present: Honorable E. S. Williams, one of the judges of the circuit court of Cook county, State of Illinois; L. L. Mills, State's attorney; Charles Kern, sheriff.

Attest: JACOB GROSS, *Clerk.*

Be it remembered that heretofore, to wit, on the 6th day of July, A. D. 1877, Mary C. Dobbins, by G. G. Gibons, her solicitor, filed in said court her certain bill of complaint, affidavit, and injunction bond, and caused to be issued out of said court, under the
504 seal thereof, the people's certain writ of summons and also a certain writ of injunction directed to the sheriff of Cook county to execute, which bill, affidavit, and injunction bond (the said writ of summons and writ of injunction not being on file) are in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court, of the July Term, A. D. 1877.

To the honorable the judges of the circuit court in and for said county, in chancery sitting:

Humbly complaining, showeth unto your honors your oratrix, Mary C. Dobbins, of said county, that in the year A. D. 1872 William P. Kerr, being, or claiming to be, the owner in fee of the south half of fractional section thirteen, in township thirty-eight north, of range fourteen east, of the third principal meridian (situated in said county of Cook), excepting therefrom the north one-third of lot three and lots nine, ten, elevin, fifteen, and sixteen, in Phillips' subdivision of the west part of said half section, constituted John C.
505 Dunlevy his attorney-in-fact to dispose of the same or any portion thereof as to such attorney might seem meet.

Further, that at that time one Charles B. Phillips claimed to own the title to the premises above described, but the said Dunlevy asserted in behalf of said Kerr that the claim of said Phillips was false and fraudulent and merely made to harrass said Kerr and interfere with his disposition of said premises; and said Dunlevy made application to Thomas S. Dobbins, then acting as the agent of your oratrix, to sell to her the undivided one-fourth part of the said premises.

Further, your oratrix would show that upon the representation of said Dunlevy, so acting as the agent of said Kerr, your oratrix, believing that said Kerr was the legal owner of the said premises, and being willing to purchase the interest so proposed to be sold by said Dunlevy, entered into a contract with him, as the agent of said Kerr, to purchase the same for the sum of eighty thousand dollars, whereof thirty thousand dollars should be paid in cash and fifty thousand dollars in two years, the last-named sum to bear eight per cent. interest per annum, to be paid semi-annually, with the pro-
506 visor and agreement that if the title to the said premises were not at the expiration of such two years legally confirmed in

said Kerr and his grantees by the judgment and determination of the United States circuit court for the northern district of Illinois no further payment of interest or principal should be made upon the last-named sum of fifty thousand dollars until the title was so confirmed in him.

Further, that said Dunlevy, in order, as he represented, to enable him to properly and successfully *to* conduct proceedings in said court for the ascertainment of the title to the said premises, required that a conveyance of the said one-fourth interest should be made to a person not residing in said State; that said Thomas S. Dobbins should execute his two notes of twenty-five thousand dollars each, payable in two years; that such non-resident should execute a trust deed upon the said premises to secure the said notes, and that such non-resident should then convey to your oratrix the said premises.

Further, that in pursuance of such contract and the demands of said Dunlevy, in whom your oratrix then had full confidence,
507 the said Kerr, on the twelfth day of October, made to Daniel P. Rhodes, then a resident of the State of Ohio, a warranty deed to the one-fourth part of said premises, and on the twenty-sixth day of November, A. D. 1872, said Thomas S. Dobbins executed his two notes, each dated June first, A. D. 1872, each for twenty-five thousand dollars, each bearing eight per cent. interest per annum, payable semi-annually on the first days of June and December, and each payable two years after date, the same being payable to his own order and by him endorsed and delivered to said Kerr, and said Rhodes executed a trust deed upon said premises to secure said notes, and also a deed of the same to your oratrix.

Further, your oratrix would show that the proceedings for the determination of the title to the said premises were exclusively under the control and management of said Dunlevy, acting as the agent and attorney of said Kerr, and that the same, although commenced about six years ago, is still pending and undetermined and no judgment has been obtained by said Dunlevy or Kerr declaring the title to the said premises to be in said Kerr and his grantees.

Further, your oratrix would show that she is informed and
508 believes that the power of attorney from said Kerr to said Dunlevy under which said Dunlivy contracted with your oratrix as aforesaid, and under which he has since been representing the interest of said Kerr in said proceeding, is an irrevocable power of attorney and contains a grant from said Kerr to said Dunlevy of one undivided one-half of the said entire premises and of the proceeds or avails thereof upon a sale or disposition of the same.

Further, your oratrix would show that she has paid to said Kerr the interest upon the two notes given as aforesaid by said Thomas S. Dobbins for the two years as stipulated in said contract as the same became due, and that since the expiration of the said two years she has at various times advanced, to be credited upon the said notes, large sums claimed by said Dunlevy to be required for various purposes in the prosecution of the said suit, and which she has paid and assisted in expediting the same to a speedy issue.

Further, your oratrix would show that the maturity of the

509 said two notes was fixed at two years by said Dunlevy upon his assurance that within that time the said proceedings would be terminated and the said title confirmed in said Kerr, and that said Dunlevy, pretending to be familiar with all the facts and all the evidence bearing upon the questions at issue regarding the title to the said land, *and* assured the said Thomas S. Dobbins, acting in behalf of your oratrix, that the said suit could be terminated in said court within the period of two years.

Further, your oratrix shows that she has not been made a party to said proceeding, it having been arranged and agreed by said Dunlevy, acting as the agent of said Kerr, that the same should be carried on in the name of said Kerr, and by said Kerr concurred in.

Further, your oratrix would show that she is informed and believes that said Dunlevy, being the owner of the undivided one-half of the said premises and interested in the said two notes, has

510 not prosecuted the said proceedings with proper diligence, for the reason, as he has frequently stated, that the South Park Commissioners of Cook county had taken possession of the said premises and had exempted the same from taxation; that the same was rising rapidly in value, and that said Dunlevy made no exertions to bring said cause to trial and place the same in a condition to be heard and determined until after the panic of A. D. 1873, and the gradual depreciation of lands in said county became probable, if not certain.

Your oratrix would further show that at various times since the expiration of the said two years your oratrix, through her agents, has proposed to sell her interest in said premises, but that said Dunlevy claimed that he held an agreement in writing, signed by said Thomas S. Dobbins, agreeing that your oratrix should not sell the same for a period of five years from the date of said notes, and insisted that the interest of your oratrix should not be sold

511 unless the three-quarters in which he was interested was sold at the same time, and also insisted upon a higher price for his said portion than your oratrix was ready and willing to take for her said interest, and thus prevented the payment of the said notes by her upon her realizing such value upon her interest as she was willing to take and as would enable her to pay off the said notes.

Further, your oratrix would show that the trust deed above mentioned was made to one Daniel Jones, and that the said Kerr and Dunlevy, in violation of good faith and of the contract so made as aforesaid, have demanded of said Jones to advertise the *said* of your oratrix's interest in the said premises under the provisions in said trust deed contained, and the said Jones has advertised the sale thereof to be made on the sixth day of July, 1877, at eleven o'clock a. m.

Further, that in the notice of such sale published by said

512 Jones it is claimed that all the interest upon said notes, except sixteen dollars remains unpaid from the first day of December, A. D. 1873, and that a sale of said premises will be made for the unpaid portion of said notes as so claimed to be unpaid, whereas the truth is that the installments of interest for the first

two years after the date of said notes were promptly paid at maturity and since then she has paid to be applied upon said notes one hundred dollars upon November 1st, 1874, and one thousand dollars upon November 3rd, 1874, and five hundred dollars on November 17th, 1874, and two hundred and fifty dollars on August 28th, 1876, and one hundred dollars on December 13th, 1876, and eight hundred dollars on March 26, 1877.

Further, your oratrix would show that the said Kerr and Dunlevy, notwithstanding the protestations of your oratrix, insist that the said sale shall be made, and the said Jones, as your oratrix
513 is informed and believes, intends to make the same in compliance with their demands.

Further, your oratrix would show that although said premises were so advertised for sale about three weeks ago, she was informed by her said husband, and verily believed until the evening of the fifth of July, A. D. 1877, that the said Kerr and Dunlevy had no real intention of allowing said land to be sold, and was further informed by her said husband and verily believes that her said interest was advertised for the sole purpose of inducing your oratrix to furnish money to said Kerr and Dunlevy and of working on her fears, they being in necessitious circumstances, and claiming, amongst other things, that they needed funds to carry on said proceedings, but for the furnishing of which your oratrix was not to be in any way responsible.

Further, your oratrix would show that said Kerr resides in the State of Ohio, and that she has never seen or conversed with
514 him, but that said Dunlevy, who has always claimed to have full power to act for said Kerr, has frequently stated, as your oratrix is informed and believes, that neither he nor said Kerr claimed the principal sum of said notes nor the full amount of interest, but that their necessities compelled them to insist upon the payment of several thousand dollars.

Your oratrix therefore prays that said William P. Kerr, John C. Dunlevy, and Daniel Jones be made parties defendant hereto; that they be summoned to appear and answer the allegations herein contained, but not under oath, their oaths being hereby expressly waived.

That a temporary writ of injunction be issued restraining them and each of them from attempting the collection of the said notes by the foreclosure of the said trust deed by sale under its provisions or otherwise until the title to the premises above described be confirmed in the said proceedings in said Kerr and his grantees; that upon a hearing had herein the said injunction be made
515 perpetual, if the said title be declared adverse to said Kerr and his grantees.

That if the court deem it necessary for the assertion and protection of the rights of your oratrix the said trust deed and notes be so corrected as to conform to the contract entered into between her and said Dunlevy, as the agent of said Kerr, and that she have such

other and further relief as may be equitable in the premises and to the court may seem just.

And she will ever pray, &c.

MARY C. DOBBINS.

G. GILB'T GIBBONS,
Solicitor for Compl't.

STATE OF ILLINOIS, } ss:
Cook County, }

Mary C. Dobbins, being duly sworn, says that the facts set forth in the foregoing bill by her subscribed wherein stated upon her own knowledge are true, and wherein stated upon information and belief she believes them to be true.

MARY C. DOBBINS.

Subscribed and sworn to before me this 6th day of July, A. D. 1877.

[NOTARIAL SEAL.] G. GILB'T GIBBONS,
N. P. of Cook Co., Ill.

516 To the clerk of the circuit court:

Let a writ of injunction issue, pursuant to the prayer of the foregoing bill, upon the complainant filing bond in the penal sum of five hundred dollars, with Arthur B. Meeker as surety.

July 6, 1877, at 20 minutes to 11 a. m.

E. S. WILLIAMS,
Judge, &c.

Bill for Injunction.

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court, of the July Term, A. D. 1877.

MARY C. DOBBINS
vs.
WILLIAM P. KERR, JOHN C. DUNLEVY, and DANIEL JONES.

STATE OF ILLINOIS, } ss:
Cook County, }

517 Thomas S. Dobbins, being duly sworn, says that he has heard read the bill this day to be filed in the above case; that he knows the facts therein stated, and that the same as stated are true; further, that the rights of the complainant will be unduly prejudiced if the injunction prayed for in said bill be not issued immediately and without notice.

T. S. DOBBINS.

Subscribed and sworn to before me this 6th day of July, A. D. 1877.

[NOTARIAL SEAL.] G. GILB'T GIBONS,
N. P. of Cook Co., Ill's.

Inj. Bond.

Know all men by these presents that we, Mary C. Dobbins and Arthur B. Meeker, of the county of Cook and State of Illinois, are held and firmly bound unto William P. Kerr, John C. Dunlevy, and Daniel Jones, of the county and State aforesaid, in the sum of
518 five hundred dollars, to be paid to the said Kerr, Dunlevy, and Jones, their executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, jointly and severally, and our respective heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this sixth day of July, 1877.

Whereas the above-bounden Mary C. Dobbins has filed her bill of complaint in the circuit court of the county of Cook and State of Illinois against the above-named Kerr, Dunlevy, and Jones, praying, among other things, for an injunction to restrain the sale of certain premises in said bill described under a trust-deed from Daniel P. Rhodes to said Jones, dated November 26th, 1872;

And whereas E. S. Williams, one of the judges of said court, has allowed an injunction for that purpose, according to the prayer of said bill, upon the said Mary C. Dobbins giving bond and security as provided by law and as required by the order of said judge
519 granting said injunction:

Now, therefore, the condition of the above obligation is such that if the above-bounden Mary C. Dobbins and Arthur B. Meeker, their executors or administrators, or any of them, shall and do well and truly pay, or cause to be paid, to the said Kerr, Dunlevy, and Jones, their executors, administrators, or assigns, or either of them, and also all such costs and damages as shall be awarded against the said complainant in case the said injunction shall be dissolved, then the above obligation to be void; otherwise to be and remain in full force and virtue.

MARY C. DOBBINS, [SEAL.]
ARTHUR B. MEEKER. [SEAL.]

Sealed and delivered in presence of—

And thereupon afterwards, to wit, on the 18th day of August, A. D. 1877, there was filed a certain petition and bond, which petition and bond are in the words and figures following, to wit:

520 STATE OF ILLINOIS, *ss:*

Circuit Court of Cook County. In Chancery.

MARY C. DOBBINS
vs.
WILLIAM P. KERR, JOHN C. DUNLEVY, and DANIEL A. JONES.

To the honorable the judges of said court:

Your petitioner, William P. Kerr, one of the defendants in the above-entitled suit, respectfully represents unto your honors

that at the time of the commencement of this suit the said defendants, Dunlevy and Jones, and the said complainant, and each and every of them, were, ever since have been, and now are, citizens of the State of Illinois, and that at all of said times your petitioner was, ever since has been, and now is, a citizen of the State of Ohio; that he is the only defendant who has a beneficial
521 interest in said suit; that the subject matter in dispute in this suit exceeds, exclusive of costs, the sum of five hundred dollars; that in said suit there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between the said petitioner and the said complainant in the United States circuit court in and for the northern district of Illinois, as can likewise all the rights of the parties herein.

Wherefore your petitioner prays that said suit be removed to the circuit court of the United States for the northern district of Illinois, and herewith tenders to this court a bond with surety in the sum of three hundred dollars, according to the statute of the United States in such case made and provided.

WM. P. KERR,
By GOUDY, CHANDLER & SKINNER,
His Atty's.

GOUDY, CHANDLER & SKINNER,
Solicitors for said Kerr.

522 Know all men by these presents that we, Orrin Skinner, as principal, and Horace A. Hurlbut, as surety, are holden and bound unto Mary C. Dobbins in the penal sum of three hundred dollars; for the payment of which sum, well and truly to be made to said Mary C. Dobbins, her heirs, executors, and administrators, we, jointly and severally, bind ourselves, our and each of our heirs, executors, and -ministrators, firmly by these presents. Sealed with our seals this Aug. 18, 1877.

The condition of the obligation is such that whereas a suit was brought on the 6th day of July, 1877, in the circuit court of Cook county, State of Illinois, in chancery, in which the said Mary C. Dobbins is complainant and said William P. Kerr and others are defendants, and said suit is now pending in said circuit court of Cook county, and is removable into the circuit court of the United States for the northern district of Illinois under the act of
523 Congress in such case made and provided; and whereas the said William P. Kerr has filed his petition in said Cook county circuit court for the removal of said suit into the next circuit court of the United States for the northern district of Illinois to be held:

Now, therefore, if the above-bounden William P. Kerr shall enter in said circuit court of the United States on or before the first day of the next term after the date of the order of removal by said circuit court of Cook county as prayed for as aforesaid a copy of the record in said suit, and shall pay all costs that shall be awarded by said circuit court of the United States if said court shall hold that said

suit was wrongfully and improperly removed thereto, then this obligation shall be void; otherwise to be and remain in full force and virtue in law.

ORRIN SKINNER. [SEAL.]
HORACE A. HURLBUT. [SEAL.]

And thereupon afterwards, to wit, on the 17th day of September, 1877, the following proceedings were had and entered of record in said cause, to wit:

524 *Bill.*

20257.

MARY C. DOBBINS
vs. } 1089.
WILLIAM P. KERR, JOHN C. DUNLEVY, and DANIEL JONES.

This day came the said defendant, William P. Kerr, by Messrs. Goudy, Chandler, and Skinner, his solicitors, and it appearing to the court that the said defendant heretofore filed his petition for the transferring of said cause into the United States circuit court for the northern district of Illinois, and the said defendant offering as surety a bond in the penal sum of three hundred dollars, with Orrin Skinner as principal and Horace A. Hurlbut as surety, conditioned that said defendant will enter into the said circuit court of the United States on the first day of its next session copies of the process issued in said cause, and the court, being fully satisfied with the surety offered, doth order that said cause be, and it is hereby, transferred to said United States circuit court for the northern district of
525 Illinois, according to the act of Congress in such case made and provided.

STATE OF ILLINOIS, } *ss:*
Cook County, }

I, Jacob Gross, clerk of the circuit court of Cook county and the keeper of the records and files thereof in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all papers filed and proceedings had and entered of record in a certain cause lately pending in said court, on the chancery side thereof, between Mary C. Dobbins, complainant, and William P. Kerr *et al.*, defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this seventeenth day of September, 1877.

[Seal Circuit Court of Cook County, Ill.]

JACOB GROSS, *Clerk.*

Endorsed: Filed Sept. 29, 1877. Wm. H. Bradley, cl'k.

526 *Answer of John C. Dunlevy.*

United States Circuit Court for the Northern District of Illinois. In Ch'y.

MARY C. DOBBINS
vs.
WM. P. KERR, DAY'L A. JONES, & JOHN C. DUNLEVY.

John C. Dunlevy, one of the defendants in the above cause, for answer to said bill of complaint, says that he has no interest in the notes and trust deed specified and referred to in complainant's said bill, nor is he entitled to one cent of the money secured by the same, nor has this defendant any ownership whatever in said notes or trust deed, nor has he ever had any ownership in said notes or trust deed, but said notes are and always have been the exclu-
527 sive property of said Kerr, and he alone is entitled to the proceeds thereof. Defendant denies that he ever held, or that said Kerr ever executed *a* to him, a power of att'y, coupled with an interest of one-half in said lands, or with any other interest; but the defendant did, on June 1st, 1872, and does still, hold a power of att'y from said Kerr, authorizing respondent to prosecute and compromise suits pending about said land, and to negotiate for the sale and transfer thereof; said power of att'y will be produced on the hearing of this cause.

Defendant also held, on June 1st, 1872, a certain agreement in writing called an "option," made by said Kerr on Feb. 2d, 1869, to F. Dunlevy, and by him on July 13, 1870, assigned and transferred to this def't, whereby said Kerr gave said F. Dunlevy or his assigns the privilege of buying one undivided fourth interest in said lands upon terms set forth therein; whether said option was of binding force & legal validity against said Kerr this defendant was & still is in great doubt; a copy of said option is hereto attached and made part hereof.

528 That about June 1st, 1872, the def't negotiated a sale to said Dobbins of said ¼ interest in said land, and, fearing said Kerr might possibly decline to recognize the binding validity of said option and carry out said negotiation for sale of said interest by executing his deed therefor, this def't prepared said deed to said Rhodes, and sent the same to said F. Dunlevy, who resided near to said Kerr in Ohio, and requested his influence and assistance to get said Kerr to execute said deed to said Rhodes, and thus give validity and effect to said option, and at the instance of said F. Dunlevy, as well as of deft, said Kerr executed said deed, and he received & accepted the two notes of said Dobbins of $25,000 each secured by said Rhodes' trust deed aforesaid, and assumed and agreed to be paid by said compl't, Mary C. Dobbins, in her deed from said Rhodes to her, in full satisfaction of the said $50,000 which he was entitled to receive under and by the terms of said "option," and cancelled the same, and thereby discharged the def't as assignee of said F. Dunlevy from the payment of said sum of $50,000 provided for in said

"option," which belonged solely & entirely to said Kerr,
529 which said Rhodes and Mrs. Dobbins well knew.

This defendant denies that any agreement, arrangement, or understanding was had, made, or entered into by def't on behalf of said Kerr with said Rhodes or Mrs. Dobbins or Mr. Dobbins at the time or after said sale to the effect that said two notes should not be paid until after the title of said Kerr was made perfect, or until litigation then about should be ended; but avers, upon the contrary thereof, that the whole agreement of purchase was in writing, the original of which will be exhibited on the hearing hereof and made part hereof, and that said Rhodes or Dobbins bought said ¼ interest after full consultation with C. T. Bowen, one of the park commissioners, and, after a full and complete examination of said Kerr's title by Judge Fuller, of the firm of Fuller and McCagg, and his opinion expressed that notwithstanding the litigation then pending about said land that said Kerr's title was perfectly good.

Defendant, further answering, says that before the completion of said sale, and before the execution of said notes or contract of
530 purchase, said Dobbins did ask said Kerr whether, if it should be inconvenient for him, said Dobbins, to pay the whole *the whole* amount of said two notes at maturity, he, Dobbins, could have an extension of time upon them or a part of them, and said Kerr, in answer to said enquiry, wrote a letter, herewith exhibited and made part hereof, which letter was read to said Dobbins before he executed said notes or signed said contract of purchase, and being before said Rhodes accepted the deed therefor, and before he executed the said trust deed to secure said notes.

This defendant, further answering, says that at the maturity of said notes said Dobbins requested further time to pay the same, and it was agreed verbally by said Kerr that if said Dobbins would pay all interest then due upon said notes, and also pay $5,000 on the principal thereof, and agree to pay 10 per cent. interest on the balance of the principal until paid, that then he, said Dobbins, should have further time for the payment of the balance of the principal
531 thereof; that said Dobbin's accordingly accepted a thirty-day draft for $2,500 of the principal of said notes drawn on him by said Kerr, and that said Dobbins paid thereon the sum of $1,600 to be credited on the principal of said notes when there was no interest due thereon, which draft and acceptance will be exhibited herewith on the hearing of this cause; and said Dobbins agreed upon the maturity of this said acceptance to accept and pay another draft of a similar amount, which should be in full of said $5,000, so agreed to be paid upon the principal before an extention should be allowed or granted, but said second draft was never drawn, because the whole of the first was never paid according to agreement.

Defendant, answering, says that said Dobbins has both verbally and by letter often promised said Kerr to pay said notes, and has often since the maturity thereof requested the good offices of this defendant (being a friend of both parties) to induce said Kerr to be lenient in the collection of said claim since the maturity thereof,

and has frequently received his promises to pay the same and notified Kerr thereof.

Affiant further says that there was a mistake in naming
532 the amount due on said notes in the advertisement for sale aforesaid, but he says that he heard said Kerr on the 6th & 7th of July last, before said sale and before said injunction was applied for, propose and offer said Dobbins that he would correct any mistake and allow him every and all credits to which he or Mrs. Dobbins might be entitled, and take no more than was actually due on said claim of said Dobbins, would pay or prevent said sale to proceed, and also offer then and there to enter the proper credit on said notes for whatever had been paid on the principal and interest thereof.

Defendant, further answering, says that he denies that at the time of said sale to said Dobbins, or at any other time, he, on behalf of said Kerr or in any other way, promised or agreed that said notes should not be paid until the end of litigation about said land, but defendant says that said land was sold said complainant at about one-half its true value by reason of the promised aid and assistance of said Dobbins and her att'ys in closing up said litigation and procuring a fair price for the whole of said land in case the same
533 could not be reserved from the park appropriation.

And this defendant, having fully answered in the premises, and having no interest in the subject-matter of this suit, asks to be hence dismissed, with his costs.

JNO. C. DUNLEVY.

Subscribed and sworn to before me this twenty-second day of April, 1878.

[SEAL.] HENRY BROWNE,
Notary Public.

Endorsed: Filed April 22, 1878. Wm. H. Bradley, cl'k.

534 *Answer of Wm. P. Kerr.*

United States Circuit Court, Northern District of Illinois. In Chancery.

The answer of William P. Kerr to the bill of Mary C. Dobbins against the said Willian P. Kerr, John C. Dunlevy, and Daniel A. Jones.

The said William P. Kerr, saving and reserving unto himself all exceptions and objections to the said complainant's bill for untruth, uncertainty, and insufficiency, for answer to said bill says:

He admits that in the year 1872 he was and claimed to be the owner in fee of the tracts and parcels of land in the complainant's bill in that behalf mentioned. This respondent, further answering, says he is informed and believes that one Charles B. Phillips claimed to have either the title to or some interest [in] the said land. This respondent has no knowledge as to what assertions, if any, the defendant, John C. Dunlevy, made touching the claim of the said Phillips; that he denies that the said John C. Dunlevy, as the agent

or attorney-in-fact of this respondent, made any assertions or represations to the said Thomas S. Dobbins touching the same, as alleged in said bill. This respondent has no knowledge of the said John C. Dunlevy having made application to the said Thomas S. Dobbins, acting as the agent of complainant, to sell to her an undivided one-
fourth part of said premises, but he is informed and believes,
535 and upon such information and belief he denies, that
the said John C. Dunlevy applied to the said Thomas S. Dobbins, either as agent of complainant or otherwise, to sell to her such interest in said land, and this respondent is informed and believes, and upon such information and belief he dedies, that the said John C. Dunlevy, either acting as the agent of this respondent or otherwise, entered into a contract with said complainant to sell to her and she to purchase from him for the sum in that behalf in said bill stated, or for any other sum, the premises in said bill mentioned, upon the terms and conditions in said bill named, or upon any terms or conditions binding on this respondent other than those set out in the deeds and notes executed in this behalf, but, on the contrary thereof, this respondent is informed and believes, and upon such information and belief charges, that said complainant, being desirous of obtaining an interest in said land, applied, by her husband, who knew that said Dunlevy had a contingent interest in said land, to purchase from respondent a fourth interest therein, and that thereupon the said Dobbins entered into an agreement in writing by which he undertook to purchase, and the said Dunlevy undertook to procure for her, a sale and conveyance of said ¼ interest in said land from respondent; and thereupon respondent did sell, and in accordance with said agreement convey, the interest in said land in said bill mentioned, for the sum of $80,000, of which the sum of thirty thousand dollars was
paid in money, and the said two notes of twenty-five
536 thousand dollars each were executed and delivered by
said Dobbins to this respondent according to the terms of said written agreement. Ten thousand dollars was to be placed in hand, ten thousand dollars in thirty days, ten thousand dollars in sixty days, and the remainder to be secured by two promissory notes of the said Thomas S. Dobbins of twenty-five thousand dollars each, payable two years after June 1, 1872, with interest at eight per cent. per annum, payable semi-annually; and this respondent denies that there was in or connected with said contract any proviso or agreement that if the title to said premises *were* not at the end of two years legally confirmed in this respondent, no further payments of interest or principal should be made upon said sum of $50,000 until the title to said property should be so confirmed in him, as alleged in said bill. This respondent, upon information and belief, denies that the said John C. Dunlevy, in order to enable him properly and successfully to conduct the proceedings in said suit for the ascertainment of the title to said premises, required that a conveyance of said one-fourth interest should be made to a person residing without the State of Illinois. This respondent, upon recollection, information, and belief in this behalf states that said con-

tract of purchase and sale provided, among other things, that the said interest in said land should be conveyed to whomsoever the said Thos. S. Dobbins should designate, and that it was mutually agreed between all the parties interested that said one-fourth interest should be conveyed to one Daniel P. Rhodes, of Cleve-
537 land, Ohio, and that he upon receiving said conveyance should execute a deed of trust on the property so conveyed to secure the payment of said two notes of $25,000 each, made and delivered by said Thomas S. Dobbins to respondent; and respondent in this behalf further states that said Dobbins was so anxious to make such purchase that he stipulated and agreed in and by said contract in writing to accept a quit-claim deed of said one-fourth interest instead of a special warrantee deed therefor, and thereupon the said property was by this respondent conveyed to the said Daniel P. Rhodes, at the instance and request of the said Thomas S. Dobbins, and the said Daniel P. Rhodes executed the said trust deed to the said defendant, Daniel A. Jones, to secure the said notes of the said Thomas S. Dobbins, and the said Thomas S. Dobbins then caused and procured the said Daniel P. Rhodes to release and quit-claim the said property to the complainant. This respondent, further answering, says that when he came to convey said property to the said Daniel P. Rhodes he of his own voluntary choice substituted a deed of special warranty against his own acts in lieu of the quit-claim deed provided for, and he admits that said conveyance was made pursuant to and in performance of said agreement, except so far as changed and varied by the voluntary consent of the parties. And this respondent, further answering in this behalf, says that for the express purpose of relieving himself from personal responsibility touching said transaction he required that the said notes of the said Thomas S. Dobbins should
538 be made payable to his own order and endorsed by him, to which requirement of this respondent the said Thomas S. Dobbins acceded and made the said notes in that form, and endorsed them in blank and delivered them to this respondent.

This respondent denies that the proceedings for the determination of the title to said premises were exclusively under the control of the said John C. Dunlevy as agent or attorney of this respondent; but on the contrary thereof, he avers that said Dobbins having accepted the said property without warranty of title from this respondent (except against his own acts, and even that by the voluntary concession of this respondent), he, the said Dobbins, and the said complainant have proportionately the same interest in said property and in the prosecution and defense of suits involving the title thereto as this respondent had or has. And this respondent states in this behalf that the said suit pending in the United States circuit court for the northern district of Illinois, in bill mentioned, was not the only suit then pending involving the title to said land; that at that time there was another suit pending brought by one Cornelia Russell, claiming dower in the whole of said land as widow of one John B. F. Russell, deceased; and that the said Thomas S. Dobbins, immediately upon making said purchase, employed and retained

counsel, on behalf of himself and of complainant, to resist the claim of said Cornelia Russell in the superior court of Cook county, and in the supreme court of Illinois; and that the said par-
539 ties, by their said counsel, actively participated in the conducting of said suit pending in the United States circuit court with the same power to "push" the same to a speedy issue that this respondent had. And this respondent, in this behalf, denies that he has been guilty of any negligence or unreasonable delay in the prosecution of said suit; that it involves a series of complicated and fraudulent transactions, which required much time and labor to ferret out, in which he has had great success, but it has necessarily caused much delay. This respondent denies that the said John C. Dunlevy holds any power of attorney from this respondent which contains a grant from this respondent to him of one undivided half of said premises, and of the proceeds and avails thereof, upon a sale or disposition of the same as in bill alleged.

This respondent denies that payments have been made upon the indebtedness secured by the said trust deed of the sums and to the amount in bill stated. He admits that interest has been paid on the two principal notes secured by said trust deed to June 1, 1874. He admits, further, that the following payments have been made on account of said indebtedness, to wit: November 4th, 1874, one thousand dollars; November 18th, 1874, five hundred dollars; November 30, 1874, one hundred dollars. Said payments were made upon a bill of exchange drawn by this respondent upon and accepted by Thomas S. Dobbins for twenty-five hundred dollars, dated August 13th, 1874, payable thirty days after date to the order of this respondent at the Illinois Trust
540 and Savings Bank, and were credited thereon when made, said bill of exchange having been drawn and accepted on account of said indebtedness, and left at said bank for collection. This respondent admits that on or about the 28th day of August, 1876, the sum of two hundred and fifty dollars was paid to John C. Dunlevy. Whether any part of said sum should be applied on said indebtedness depends upon some arrangement or understanding between said Dunlevy and said Dobbins, which this respondent cannot state; but this respondent denies that any other or further payments have been made than those above specified on account of the indebtedness secured by said trust deed. This respondent, touching the averment in said bill that the maturity of the said two notes of the said Thomas S. Dobbins of $25,000 each was fixed at two years by the said John C. Dunlevy, upon his assurance that within that time the said proceedings would be terminated, and the title to said premises determined, says he has no knowledge of the giving of any such assurance by the said John C. Dunlevy. And this respondent in this behalf says that while he hoped and desired that the said litigation should and would be terminated within that time, as no doubt the said Dunlevy and Dobbins likewise hoped and desired, yet it was a mere matter of opinion, if any was expressed in that behalf, and this respondent denies that there was or is any agreement that the said notes should not be paid when due. And this respondent

541 expressly denies that he ever authorized the said John C. Dunlevy or any one else to agree that said notes should not be paid at maturity, but on the contrary he expressly instructed him, while the matter was pending and before it was consummated, not to make any such agreement. This respondent admits that complainant has not been made a party to said proceedings, but he denies that it has been "arranged," as alleged, that they should be carried on in the name of this respondent, but the truth is that the proceedings have been so "carried on" because the suit was pending when the complainant acquired her interest in the subject-matter of the suit, and the said "carrying on" in the name of this respondent has been actively participated in by the said Dobbins. This respondent denies that the said suit has not been prosecuted more vigorously for the reason that the said John C. Dunlevy was the owner of one-half interest in said notes, and because the South Park Commissioners had taken possession of the land, and it has been exempted from taxation and was expected to rise in value as in bill stated. And this respondent in this behalf alleges that the said John C. Dunlevy has no interest in said notes, and that whatever delays have occurred in the prosecution of said suit were and have been such and such only as are necessarily incident to complicated litigation, and that in any and all such delays the said Dobbins has concurred as fully as this respondent has done. What claims

542 the said John C. Dunlevy has set up that he held an agreement with the said Thomas S. Dobbins that complainant should not sell her interest in said land for a period of five years from the date of said notes is unknown to this respondent, but this respondent in this behalf denies that there is or ever was any written agreement to him whereby the said complainant was prohibited from selling her interest in said property at any time or at any price she might think fit. And, further, he alleges in this behalf that the said notes matured June 1, 1874, and this respondent is informed and believes, and upon such information and belief he alleges, that long before any proceedings were commenced to foreclose said trust deed the said John C. Dunlevy, acting for this respondent, urged and insisted that said interest be sold independently of any sale or proposed sale of the interest of this respondent in said land. This respondent admits that he has demanded of the said Daniel A. Jones, trustee, that he advertise said land for sale pursuant to the terms of said trust deed, for default of the said Thomas S. Dobbins in paying said notes, and he admits that notice of such sale has been advertised as alleged in bill, but he denies that the same has been done in violation of any agreement as therein alleged. This respondent admits that in the notice for the sale of said land an error occurred by the use of the words or figures "$16," when the words intended to be used were "$1,600"—sixteen hundred dollars—which error occurred by accident and mistake

543 and this respondent alleges in this behalf that said notice had been published for 24 days before the day fixed for the sale, and the said Dobbins well knew thereof; that he never applied to said trustee to have said mistake corrected, but waited until the

day fixed for the sale before applying for an injudction, and then made use of the said accident as a pretext for obtaining an injunction. And this respondent avers in this behalf that he came here from Ohio to attend said sale, in good faith and at considerable loss of time and money; that had his attention or that of the trustee been called to said mistake it would have been promptly corrected; that had said sale proceeded all proper credits would have been recognized and allowed, and the notes produced showing the amount due, and he avers that the pretense of an attempt to sell for too large a sum was a mere shift and device resorted to to obtain an injunction when there was no need or occasion for so doing. As to the amounts actually paid on said notes this respondent refers to his statement of such payments in a previous part of this answer. This respondent admits that he insists upon the trustee making sale of said property pursuant to the terms of said trust deed. He further admits that the property was advertised especially to induce payment of the money due. But he never has, in person or by any authorized agent, conceded to the complainant or to said Thomas S. Dobbins that he had not a right to demand pay-
544 ment of said notes according to their terms. Any concession- of the kind set up and alleged in said bill were mere matters of grace and favor on the part of this respondent, and not in the acknowledgment of any right on the part of complainant or said Thomas S. Dobbins to have such payment postponed, and he denies the right of them or either of them to have the terms and conditions of said notes and trust deed in any way changed or modified, as prayed in said bill. This respondent admits no other matter or thing in said bill alleged not hereinbefore confessed, avoided, traversed, or denied; and, having fully answered, prays to be hence dismissed with his costs.

W. P. KERR.

STATE OF OHIO, }
County of Licking, } *ss:*

William P. Kerr, being duly sworn, says he has read the foregoing answer and knows the contents thereof, and that the matters and things in the said answer stated as of his own knowledge are true; and that the matters and things therein stated as upon information and belief he believes to be true.

W. P. KERR.

Subscribed and sworn to before me, the undersigned, a notary public in and for said county. Witness my hand and notarial seal this twenty-eighth day of September, A. D. 1877.

[NOTARIAL SEAL.]

WILLIAM LYON,
Notary Public, L. C., O.

(Endorsed:) Filed April 22, 1878. WM. H. Bradley, cl'k.

545 United States Circuit Court, Northern District of Illinois.
In Chancery.

MARY C. DOBBINS
vs.
WILLIAM P. KERR, JOHN C. DUNLEVY and DANIEL JONES.

MONDAY, *December 2d, A. D.* 1878.

Present: Hon. Thomas Drummond, circuit judge.

On motion of complainant, by H. S. Monroe, Esq., her solicitor, it is ordered by the court that the injunction herein be dissolved, and that the bill herein be dismissed without prejudice, at the costs of complainant.

It is ordered, adjudged and decreed by the court that the defendants have and recover of and from the complainant their costs and charges about their defense in this behalf expended, amounting to the sum of thirteen dollars and eighty cents, and that execution issue therefor; which was all the evidence introduced upon
546 said hearing; whereupon, on the 11th day of May, A. D. 1882, the said judge of the circuit court of the United States within and for the northern district of Illinois delivered his opinion as follows, to wit:

Opinion of Judge Drummond.

547 In the Circuit Court of the United States for the Northern District of Illinois.

THE SOUTH PARK COMMISSIONERS *vs.* W. P. KERR *et al.*

DRUMMOND, J.:

This was a bill filed by the South Park Commissioners to obtain the title, at present held by Frederick A. Ingals, in an undivided quarter of the south half of section 13, township 38, range 14, which, it is claimed, Ingals holds in trust for them. The circumstances under which the claim is made are as follows: In October, 1878, a decree was rendered in this court terminating a litigation between Kerr and the commissioners, by which the latter were required to pay the value of certain parts of the land in controversy to Kerr, to be ascertained in the manner stated in the decree. An appeal was taken from the decree, and while the case was pending in the Supreme Court of the United States negotiations for a settlement of the controversy were opened between Kerr, through his agent, and some of the South Park Commissioners. The result of those negotiations was that in May, 1879, a contract was entered into by Kerr and the agent of some of these commissioners, by which it was agreed that the price of the land should not exceed a fixed
548 sum, and certain moneys were to be advanced to Kerr, who was to purchase up any outstanding titles which might exist. It was agreed that it should not be binding on the commissioners until it was adopted by the board in regular session. In fact, it never was adopted by the board, and therefore never became opera-

tive between Kerr and the commissioners; but, in consequence of this proposed contract, various acts were done and moneys paid, which have given rise to the controversy in this case.

At this time George Schneider, president of the National Bank of Illinois, was the treasurer of the commissioners, and as such had a large balance in his hands on deposit in that bank. It was proposed to lay this contract before the board of commissioners at a future time for its adoption. Before that was done, and, as it would appear, in part execution of the arrangement which had been made between Kerr and some members of the board, as already mentioned, application was made to the National Bank of Illinois to obtain funds for Kerr, and some members of the board went to the bank and stated the arrangement which was proposed, and that a settlement of the litigation would probably be made and ratified by the commissioners, requesting the bank to advance to Kerr the sum of $60,000. In 1872 Kerr had sold the undivided quarter of the premises in controversy to Mrs. Dobbins for a considerable sum of money paid at the time and for two notes of $25,000 each, given by her husband and secured upon the property. At the time this loan was made by the bank these notes were turned over as collateral security, with two other notes, given by W. H. Nixon and
549 L. Curry of $30,325 and $30,225, respectively. Under these circumstances, in May, 1879, the money was advanced by the bank, but it should be added it was done solely upon the representations that were made by some of the South Park Commissioners, and upon their assurance that it was substantially a transaction for the benefit of the commission. The money would not otherwise have been advanced by the bank upon the notes given by Nixon or Curry, or upon the Dobbins notes. On the 12th of November, 1879, the title of Mrs. Dobbins to the land in controversy was purchased by Kerr, and a deed was made to Ingals, and on the 14th of November, 1879, the bank advanced $21,000 under substantially the same assurances and under the same circumstances as in the former case. In the latter Mr. Bennett gave his note for the money advanced, and the bank advanced the money for the same reason as in the previous advance. Kerr, in the meantime, had purchased in what were claimed to be some outstanding titles upon the property. On the 21st of November, 1879, at a regular meeting of the South Park Commissioners, at which all were present, the proposed contract, which has been heretofore mentioned, was presented to the board. Objection was made at least by one member of the board, and it was laid over for future consideration. After the advances were made by the National Bank of Illinois application had been made to some members of the board that the money advanced by the bank should be refunded, and, accordingly, on the 21st November a resolution was passed by the board, apparently having that object in view. It was as follows:

550 "Resolved, That the president of this board is hereby authorized to make such settlement and adjustment of the litigation regarding the south half of fractional 13, 38, 14, and such purchase of the title thereto, as in his judgment may be advisable,

and for that purpose to draw from the treasury of the commission a sum not exceeding $90,000, before reporting the same to this board, and that the auditor is hereby instructed to sign the necessary warrants for said sum of money, or so much thereof as is called for."

On the 24th of November, 1879, a warrant was issued for $82,800, payable to the National Bank of Illinois, and delivered to the bank on that day, and the Curry, Nixon, and Bennett notes and a declaration of trust which Mr. Ingals had made were delivered to Mr. Morgan, the president of the commission. On the 26th of February, 1880, a second warrant for $7,200 was drawn payable to Mr. Morgan's order, which was indorsed to the agent of Kerr, and upon which he received the money, a note having been signed by Mr. Curry for that amount and delivered to Mr. Morgan, together with a declaration of trust by Mr. Ingals. In April, 1880, Mr. Morgan turned over all these papers and securities to the secretary of the commission, who gave a receipt therefor. It is proper to say that upon some question being made as to the condition upon which Mr. Ingals holds the property he has stated in court that he has no interest of his own, but is a simple trustee, and is willing to convey the property as the court may direct, notwithstanding the fact that in some of the different declarations of trust which he has given he
551 may have stated that his conveyance was to be subject to certain contingencies.

There is more or less difference in the testimony of the witnesses as to the number of South Park Commissioners who individually agreed to the contract of May, 1879, but as it was admitted it was made on the condition that it was to be only binding when ratified by the board, and that it was never so ratified, this difference is perhaps not material.

In June, 1879, a judgment was rendered against Mrs. Dobbins in favor of Kerr on her covenant for the payment of the two notes of $25,000 each. A motion was immediately made to set aside the judgment, which is still pending. Kerr has stipulated that in consideration of the payment of the two notes the judgment shall be set aside and the suit dismissed. Mr. Ingals, the trustee, in his answer claims that he owns the Dobbins title to secure the payment of the $21,000 and the $7,200 heretofore mentioned, and that he is only to convey the premises to the plaintiff upon the consummation of the contract previously referred to of May, 1879. The testimony shows that some of the commissioners, perhaps a majority, adopted the resolution of November 21, 1879, with a view of carrying out the contract of May, 1879, and, if it were not adopted by the board, that the money paid to Kerr should stand as a credit upon the amount that might be ultimately allowed for the land that was to be appropriated by the South Park Commissioners; but that some of the commissioners understood that whatever payment was made was for the purchase of the Dobbins title. When this title
552 was conveyed, which is now held by Ingals, the consideration was $21,000 already mentioned, together with the discharge of the two notes of $25,000 each, which are now held by the South Park Commissioners under the circumstances referred to.

The difficulty in this case consists in the fact that the money was paid upon different assumptions made by the different persons, no one of which was justified by the ultimate circumstances. Some of the commissioners assumed that the money was to be and was paid upon the condition that the contract of May, 1879, should be carried into effect not upon the basis that the Dobbins or any other portion of the title was to be purchased, while others assumed that the money was to be paid upon the basis that the Dobbins title was to be purchased. There can be no doubt that the agent of Kerr acted throughout upon the basis that the entire south fractional half of section thirteen constituted the subject-matter of the contract of May, 1879, and that it was to be carried into effect. The question is, what are the equities of the parties, because neither view turned out to be correct. In point of fact all the money was advanced by the bank except the $7,200 (warrant of February 26, 1880), which was paid directly to Kerr's agent. The loan of May, 1879, made by the bank, was in the form, technically, of a discount of the notes and securities that were then deposited, and the sum actually received by Kerr was less than $60,000, the discount being deducted from that amount. The loan of $21,000 was not made in the form of a discount, but was paid directly to the agent of Kerr.

553 The fact, then, is that up to November 21, 1879, when the resolution of the board was passed, which has already been cited, no money had actually been paid by the commission as a corporation, the bank having paid all the money. It was not a case, therefore, where the money was paid by the commissioners and a deed taken in the name of Ingals. It is true that it was through the influence of some members of the board that the National Bank of Illinois advanced the money, but it was the money of the bank and not of the board that was thus paid. As already said, the $7,200 was paid directly by the warrant of the board to Kerr's agent. Kerr never agreed that this or any of the other money should be paid in order to procure for the board the interests of Dobbins and his wife, namely, an undivided fourth of the land. If the South Park Commissioners are entitled to this land it is only in consequence of the state of facts which have been established and because of the advance of the money by the National Bank of Illinois in the manner stated and its repayment to the bank by the board, the money of the board thus being given to Kerr, and the two notes of $25,000 each being transferred over by Mr. Morgan, as already stated, to the secretary of the board and the $21,000 being so reimbursed by the board after its payment by the bank.

It is, therefore, a case where the money can be followed into the property, which is now held by a trustee, rather than because a trust actually existed, as where money is paid by one person and

554 the land has been transferred to another that the board would be entitled to hold the property. It seems to me, however, that the facts of the case show that the board is entitled to follow this money into the land, inasmuch as it has been transferred to Ingals under the circumstances already stated, and he now holds it in trust, and, strictly speaking, in equity he ought to be adjudged

to hold it subject to the right of the board of commissioners, but not absolutely, because, I think, if they can be placed in the position they were before the money was advanced Kerr is entitled to any equity which may exist in consequence of that being done. For, as has been already stated, he did not agree that this money should be advanced, and the property held by Ingals for the benefit of the commissioners, except *sub modo*, namely, subject to the conditions of the contract of May, 1878, to which contract the board, as a corporation, was never a party, and, therefore, it seems to me that it is the duty of the court, if a decree requiring Mr. Ingals to convey the property to the board would do any injustice to Mr. Kerr, as it might, to give him the privilege of placing the board *in statu quo* by refunding the money with interest. I am inclined to think that, as the board holds the Dobbins notes, *that* they should be paid in full before the plaintiff should be clothed with the absolute title to the property, and as there does not seem to have been money enough advanced to make that payment with interest on the notes in addition to the $21,000, which would constitute the consideration for the transfer of the Dobbins title, whatever deficiency there is ought to be made up by the board before Ingals is required to convey his title to the plaintiff.

555 This I consider to be the equities of the parties under the facts which are established in the case, but it is not possible for the court to render a decree in favor of the plaintiffs upon the bill which has been filed in this case. The proof and the allegations of the bill do not correspond. The facts which are alleged in the bill, and upon which the court would have to make a decree if the pleadings should stand, are different from those established by the proof. For example, it is stated in the bill that Mr. Morgan received this money as the agent of the board, that he disbursed it, and, in consequence of his receipt and disbursement of the money, the equity of the plaintiff exists. In point of fact, he never received any of the money. He merely transferred by indorsement a warrant for the $7,200 to the agent of Kerr, who himself received the money, and Mr. Morgan never touched any portion of the rest of the money, as the evidence clearly shows. In any event, therefore, before the court could give the plaintiff the benefit of the equity to which it is entitled there would have to be an entire remodeling of the bill.

(Endorsed:) Filed May 11, 1882. Wm. H. Bradley, clerk.

556 No decree was entered upon the rendition of said opinion, and thereafter the proceedings took place shown by the record, and the cause was again submitted and reheard on the 19th day of August, A. D. 1882, at which time, in addition to the foregoing evidence, was read on behalf of the defendants, Susie M. Kerr and others, the depositions of Wilson K. Nixon, Paul Cornell, L. Curry, and J. C. Dunlevy, taken in August, A. D. 1882, and that of James Morgan, taken July 31st, 1882, which depositions are as follows, to wit:

557 *Deposition of James Morgan.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS, Complainant,

vs.

WM. P. KERR *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Monday, the 31st day of July, A. D. 1882.

Present: Mr. Fuller, for complainant; Mr. Thompson, for defendant.

JAMES MORGAN, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Thompson, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.
Ans. ——

Mr. THOMPSON:

Q. When you first talked with Judge Dunlevy in regard to an adjustment, what was that an adjustment of — the first conversation that you ever had with him, if you can remember it?

558 A. An adjustment of the litigation and acquiring of the property.

Q. Was that after Justice Harlan's decision?

A. Yes, sir.

Q. At the time of the payment or turning over of the warrants that were issued by the South Park Commissioners to the National Bank of Illinois and the taking up of the securities from that bank, what was the understanding which you had with Mr. Kerr's representative, if any?

A. The securities are substantially the securities mentioned in the contract, and when I took up those securities I supposed they were to apply and be a part of that contract, but in case the commission should not satisfy the contract, that they would be a partial payment upon the land, simply holding those as securities to the commission.

Q. Upon what land?

A. A partial payment on the south half of fractional section 13, or Kerr's interest in it.

Q. Was there ever any understanding between Judge Dunlevy and yourself with reference to what should be done as to that payment or as to any payment you might make on account of the $90,000 in case this contract was not ratified by the board?

A. Then, that it should be a part payment upon that whole piece of property to the full extent of their interest. Of course,

559 there was this case still pending in the supreme court. We would have had no right to go and buy those notes and hold them as an investment of the money in those notes and securities.

Under the park law we can only apply this money to the purchase of land, and I could not go and take those securities and hold them as an investment except upon the understanding that they should apply. In other words, the commission would have no power to go and buy paper and invest their money in paper unless it was connected with the land which they had to acquire under the park laws.

Q. Do you know whether there were any funds in the treasury of the commission at the time of the negotiation between the bank and Kerr *in* when these notes were left with the bank and the bank advanced the $59,900?

A. Yes, sir; there was a large amount of money there, but I cannot tell you exactly how much. My impression is we had plenty of money of our own, more than enough to take up those securities, although I cannot be positive about that. We did not use the park funds because we did not feel authorized till some action was taken by the board. That was the reason of our going to the bank, and not the lack of our own funds.

560 Q. At the time you made these payments, what, if any, instructions did you have from the attornies representing the park in the Kerr litigation (or any of them) in reference to the ultimate result in their opinion of the litigation with Kerr?

Objected to as incompetent.

A. A little earlier than that I had a conversation with Mr. Kales, and he said that the time for a settlement of the litigation had arrived, and not only advised that the commission should settle, but urged it upon me in several interviews; and I also talked with Judge Trumbull, and he advised me that the commission could not hope to do any better than that decree; that he thought that was as good as the commission would ever do in that matter.

Signature waived.

561 *Depo. of W. K. Nixon.*

In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

THE SOUTH PARK COMMISSIONERS, Complainant,

vs.

WM. P. KERR and Others, Defendants.

Testimony taken by consent before S. W. Burnham, U. S. com'r [of] said court, Tuesday, the 1st day of August, A. D. 1882.

Present: Mr. Booth, representing Mr. Fuller, for complainant; Mr. Leaming, for defendant.

WILSON K. NIXON, a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. LEAMING, and deposes and says as follows:

Int. 1. Please state your name, age, residence, and occupation.

Ans. Wilson K. Nixon; age, 56; residence, Chicago; occupation, real estate.

Q. You are one of the parties defendant to this suit?

A. So I understand.

Q. I will call your attention to any conversation you may have had with John R. Walsh, president of the South Park Commissioners, since the filing of this bill of complaint, and your
562 being served touching the matter of your note. State as near as you can when it was and what he said.

A. I think a day or two after being served with notice of this suit, Mr. John R. Walsh having always been for many years a particular fried of mine, I called to see him to ask what it meant, and if it was necessary or advisable for me to engage any attorney or some one to prepare an answer in my behalf. Mr. Walsh told me it was totally unnecessary; that I need see no more about it; that there was a great deal more money than that to be paid by them to Kerr and Dunlevy by the park; that the particular party they were after was Mr. Morgan, and he wound up by again saying I need do nothing whatever about it; just let it run; no necessity to see about it at all. I took his advice as that of a friend, and I have never seen about it from that day to this.

Q. What position did Mr. Walsh occupy at that time?

A. He was in the park commission, and understood to be manager of the park board—the principal man in it. I don't know that he was president, but he was understood to be the managing man of the board, and it was for that reason and on account of my friendship with him that I called on him.

Q. That is the substance of the conversation?

A. Yes, sir.

Q. You relied on that conversation and did nothing afterwards?

563 A. I did nothing afterwards, and never have done.

Q. What would you have done in regard to the payment of the note if Mr. Walsh had insisted on its payment?

A. I should have gone to Judge Dunlevy and told him he would have to take care of it; I could not.

The right to cross-examine the witness is reserved.

Signature waived.

564 In the Circuit Court of the United States for the Northern District of Illinois.

SOUTH PARK COMMISSIONERS, Complainant,

vs.

WM. P. KERR *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 2 day of August, A. D. 1882.

Present: Mr. Leaming for defendant-.

PAUL CORNELL, a witness on behalf the defendant-, being first duly sworn, was examined in chief by Mr. LEAMING, and deposes and says as follows:

By Mr. LEAMING:

Q. You stated you were present, in your former examination, at a meeting of the board which adopted the resolution for the expenditure of the $90,000 before referred to?

A. Yes, sir.

Q. Did you not state that the proposed contract was submitted at the same meeting?

A. I did.

Q. And the consideration of it was postponed?

A. It was.

565 Q. That was after the entry of the decree, spoken of as the Harlan decree, in the United [States] courts between the South Park Commissioners and Kerr, was it not?

A. Yes, sir; it must have been.

Q. Was not the board as the board at that time advised that it would have to pay to Kerr for all the south half as section 13, excepting the 80 acres mentioned in the decree and some two block-?

A. Yes, sir; that they would probably have to pay.

Q. Will you state what was the understanding with reference to the paying of the $90,000 under the resolutions at that time of its passing as to how that should be applied in case from any cause the proposed contract fell through?

A. I understood that if the proposed contract should fall through we would have the entire third interest, as well as the Dobbins interest, as security for the money?

Q. Did you understand that those interests were consolidated in Kerr?

A. I understood that they were.

Q. How much money have the park commissioners levied as an assessment *as* the land selected by the Legislature for the park?

A. The original letter was $3,360,000.

Q. How much of that assessment has been collected?

A. More than $3,000,000.

566 Q. You may explain how it could be more than $3,000,000.

A. The interest makes considerable more than $3,000,000.

Q. How much of that money has been expended in the purchases of land?

A. Very nearly $3,000,000.

Q. How much is now on hand in the treasury, or should be?

A. In money and tax securities between $3 and $400,000.

Q. Is that assessment fund kept separate?

A. It is designed to be kept separate.

567 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS, Complainant,

vs.

WM P. KERR *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Wednesday, the 2d day of August, A. D. 1882.

Present: Mr. Leaming for defendant-.

JOHN C. DUNLEVY, a witness on behalf of the defendant-, being first duly sworn, was examined in chief by Mr. LEAMING, and deposes and says as follows:

Mr. LEAMING:

Q. When did you commence negotiations of compromise, and with whom, in respect to this land? State generally all the circumstances.

A. I cannot give the exact date, but not long after the decree entered by Judge Harlan on the 5th or 8th of October, 1878. I met James Morgan, who was president of the South Park Board, on the street. He greeted me kindly and laughingly, and said:
568 "Judge Harlan has rendered a decree in that case, and, to prevent further litigation, expense, and trouble, hadn't we better get together and settle upon a compromise?" I replied to him in about the same spirit in which he had approached me: "Yes, at any time the park board shows a disposition to settle on equitable terms I am willing to meet them even more than half way." He then said we had *know*—that under Judge Harlan's decree we have to pay Kerr for all but 80 acres—for all that belongs to Kerr of this land; we are advised by our attorneys, and are anxious to settle it on that day, *is* so that we can go to work and improve the land, and stop further expense." I met him again not many days afterwards on Dearborn or Madison, and whether he or I opened the conversation I do not remember, but I said to him, "Mr. Morgan, I want to show to you—you are the president of the park board—that Mr. Kerr is not the kind of man he has been represented to be. He is willing and anxious this matter shall be so arranged and settled that the public shall lose no money, and that no member of the board, or any party connected with the negotiation, shall suffer in the settlement." He then either went with me or referred me to Col. Thompson, who, he said, understood this case very well, and that he would have a talk with him and with other
569 members of the board, and if we could agree upon terms of settlement and stop further litigation and the very heavy expense to which we had been in the litigation that they would be exceedingly glad to do so and get possession of the land so we could improve without increasing the amount the board would have to pay for. Then, either *with*in connection with Col. Thompson or with Col. Thompson alone, I left it, but the peculiar terms of the decree of Judge Harlan under and by which Mr. Kerr was required before he

could recover from or receive from the park commissioners any pay for his land, — not only his quit-claim of all interest in the land in controversy, but the claiming deed of any parties claiming under him since the commencement of the suit, Thomas S. Dobbons, or, as he afterwards claimed, Mary C. Dobbins, held the title, or an interest by quit-claim deed, from Kerr after the commencement of the suit, and it was therefore necessary, in order that Judge Harlan's decree might be carried out, Kerr should not only quit-claim his interest to the park commissioners, but should procure a quit-claim deed of Thomas S. Dobbins or Mary C. Dobbins, or both. I also represented to Mr. Morgan, as I did to Walsh and Sherman, two
570 other members of the board, and Col. Thompson that very serious litigations and trouble and a very great deal of feeling had arisen between Kerr and Dobbins, and that therefore if I should make any settlement with the park commissioners under the terms of the decree, without deed of Thomas S. Dobbins and Mary C. Dobbins, that they, under the peculiar terms of the decree of Judge Harlan, might intervene and prevent any settlement that Kerr and the park commissioners might make, or agreement for settlement that they might make, and that, therefore, before I could enter upon any terms of settlement for Kerr with the park commissioners it was absolutely necessary that I should first have a settlement with, or procure a conveyance from, Dobbins, or Dobbins and wife, to Kerr of the Dobbins interest. This being explained to Morgan, Walsh, and Sherman, members of the park board, they personally and as members of the board agreed that all negotiations between Kerr and the park commissioners should remain in abeyance until the trouble and litigations between Kerr and Dobbins or Mrs. Dobbins should be settled, and until such time as Kerr should be able to procure a quit-claim deed of Dobbins and wife of the Dobbins interest, so that Kerr might — in such a position to comply with the decree of
571 Judge Harlan. In accordance with this understanding Kerr, by himself and attorneys, took steps to procure the title to the Dobbins interest; had the same advertised for sale under the Rhode's trust deed perhaps three times before Nov. 1, 1879; two of these sales were enjoined by Dobbins or Mrs. Dobbins; the third was voluntarily postponed by Kerr upon the agreement on behalf of Dobbins and wife that they would sell out on certain terms and conditions. After this agreement on the part of Dobbins and wife to sell to Kerr, Kerr notified Morgan, who was president of the board, and Walsh and Sherman, members of the board, that he had made an arrangement to buy the Dobbins interest, and put himself in a position to comply with Judge Harlan's decree: that he had borrowed of the National Bank of Illinois, or J. I. Bennett, of the National Bank of Illinois, $21,000, which had been paid over to Mrs. Dobbins and their conveyance secured, and that he, Kerr, by his own motion had had that interest placed in the hands of Ingals, trustee, so that under any and all circumstances it might be held as security for the $21,000 borrowed from the bank, and after the payment to the bank of the $21,000 to be reconveyed to Kerr. I

572 claimed at or about the same time, and said to Morgan and Walsh that I feared the conveyance of Dobbins and wife might not possibly convey the whole title; that it conveyed the property of Mrs. Dobbins, but I had intimations or knowledge of the fact that Thomas S. Dobbins had become indebted; that the title of this property was originally in fact in Dobbins, and that in a creditor's bill filed by Mathewson and Hunt they were claiming that this was not Mrs. Dobbins' property, but was in fact the property of T. S. Dobbins, and liable for the payment of the debts of T. S. Dobbins, Mathewson and Hunt being objecting creditors of Dobbins; and that therefore before Kerr could comply with the decree of Judge Harlan, and furnish a deed and all those claiming under him since the commencement of the suit, it would be necessary to get the title of R. S. Jenkins received under Mathewson & Hunt, creditor's bill, and R. S. Jenkins, assignee in bankruptcy of Thomas S. Dobbins, and that I would go on and procure the title of Jenkins, receiver and assignee of Dobbins for Kerr, before I would ask them to consider Kerr's title perfected, or Kerr competent to comply with the decree of Judge Harlan. I had taken steps to procure the Dobbins and wife conveyance and the conveyance of Jenkins, receiver
573 and assignee, long before I had asked the park commissioners, Morgan, Walsh, and Sherman, to trust or risk and advance any money in anticipation of Kerr's being prepared to carry out the decree of Judge Harlan.

574 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

So. PARK COM'RS, Complainant, *vs.* KERR *et al.*, Defendants.

Testimony taken before Henry W. Bishop, master in chancery of said court, Thursday, the 3 day of August, A. D. 1882.

Mr. Booth (for Mr. Fuller), representing compl't; Mr. Leaming, representing defendant.

JNO. C. DUNLEVY, a witness on behalf of defendant, being first duly sworn, was examined in chief by Mr. LEAMING, and deposes and says as follows:

Mr. LEAMING:

Q. If you have anything more to state in reply to the in-
575 terrogatory go on and state it.

A. I had the personal promise of Walsh, Morgan, and Sherman to aid Kerr individually in perfecting his title, so as to enable him to comply with the condition of the decree of Judge Harlan to procure the release of those claiming under him since the commencement of this suit. I had been prior and up to the time negotiating a loan on the notes of Dobbins, secured by the Rhodes trust deed through Jno. L. Avery, a broker; and that negotiation for a loan was pending with the Illinois Savings and Loan Company, or with some other capitalist which he represented, when it was suggested to me, I think, by Mr. Walsh that any loan made on those

securities could better be made through the National Bank of Illinois, and in accordance with such suggestion, believing as I then supposed Walsh to be a member of the executors or financial committee of the National Bank of Illinois, a loan was made of $59,900 on the Dobbins notes as collateral, with the express agreement upon the part of Walsh, and his pledge of honor
576 as an individual, and also the promise of John B. Sherman and James Morgan, that they would furnish money to Kerr, under the terms of Judge Harlan's decree, in anticipation of a settlement and compromise, and pay any money that he might want of the National Bank of Illinois, with the Dobbins notes as collateral, in settlement and payment of what they should owe or did owe Kerr on a portion, *of* least, of the south fractional half of section 13, under the decree of Judge Harlan. With such representation a loan was made of the National Bank of Illinois on these Dobbins notes as collateral instead of through John L. Avery. Mr. Walsh represented and told me both before Morgan ceased to be president of the board and after, and when Walsh became president, that the park commissioners had been advised by their attorney and by all of them, and I think he mentioned the name of two, and perhaps three—Beckwith, Kales, C. W. Fuller—that under any and all circumstances the South Park Commissioners, as a corporation, would have to pay Kerr for all of the south half of section 13, except the
577 80 acres excluded in the decision of Judge Harlan, and that the commission, as a board, were anxious to pay Kerr any amount of money that might be safe on his interest in said half section under Judge Harlan's decree, and thereby so stop the running of six per cent. interest against the commission, and in favor of Kerr; that they had money on hand which was lying idle, a large amount producing no interest, as I understood, in the National Bank of Illinois, their treasurer, and that whatever they would pay Kerr would stop six per cent. interest, under the decree of Judge Harlan.

Upon such representation I produced and suggested to Mr. Walsh, then president of the board, after Morgan had gone out, a quit-claim deed of Wm. P. Kerr to the South Park Commissioners for all that portion of the south half of section 13 which Judge Harlan had decreed should be conveyed or quit-claimed by Kerr upon the commissioner paying to him the amount in money that the land should be found to be worth, which deed was placed in my possession for that purpose, and directed me to do so. Mr. Walsh, as president of the board, said that they would receive such conveyance
578 and be glad to do so, and not only allow the $90,000.00 that had been paid as part of the purchase-money, but would be glad to pay more and stop interest on so much as they were then able to pay out of moneys lying idle that the bank had, but as the board had an attorney they could do nothing without the advice of their attorney, and we would meet the next Monday morning at Mr. Fuller's office and carry out this agreement. We did meet at Mr. Fuller's office—Mr. Walsh was present and myself—the next Monday morning. Mr. Walsh stated the terms to Mr. Fuller; Mr. Fuller objected to the South Park Commission paying Mr. Kerr any money,

as it would be putting a club into the hands of the enemies to break their heads with. I thereupon said we did not want any money; we wanted to invest the park commissioners with this title of Kerr during his lifetime, he then being in very poor health; that Kerr would require Ingals, then trustee, to also convey to the park commissioner- the title that he had upon the terms and conditions on
579 which Kerr had received the $90,000 of the purchase-money, and those terms were to be entered in the cases pending in the circuit court of the United States, and if Kerr and park commissioners could not agree upon what the full amount of the money should be the balance should be ascertained by a jury, as provided by the decree entered in the case by Judge Harlan. This arrangement was after the Supreme Court had affirmed the decree of Judge Harlan, but perhaps before the mandate had been sent down to the circuit court of Illinois. That would then have been carried out, as Mr. Kerr's agent and attorney thought, and as he thought and would be a great saving of cost and expense of litigation, and would have resulted, probably, in a settlement of the whole controversy between Kerr and the South Park Commissioner- without any further expense, trouble, or litigation; but the attorney, Mr. Fuller, for reasons that he did not give, objected to the arrangement and it was not carried out. The deeds are still in my possession and
580 have been in the possession of Mr. Leaming for all that part of the land found to belong to Kerr by Judge Harlan, ready to be delivered to the South Park Commissioners, under the terms of the decree of Judge Harlan, whenever the same shall be paid for.

Q. During the pending of the negotiation, which resulted in Kerr signing by you the contract known as Exhibit A to Morgan's answer, did you in any conversation between yourself and any one of the park commissioners ever hear it suggested on their part that the South Park Commission was purchasing or attempting to purchase what is known as the Dobbins interest? If so, state such conversation.

A. During the whole negotiation I did not understand from one of the three park commissioners with whom I talked about the negotiation that they had any plan or desire to buy the Dobbins interest as distinct from the Kerr interest, but, upon the other hand, I explained to Morgan and Walsh and to Sherman the trouble that Kerr had got into with his dealings with Dobbins; that there was very serious and grave litigation and controversy between
581 Kerr and Dobbins as to the extent of Dobbins' interest, and as to the liability of Mrs. Dobbins in paying Kerr what she or Dobbins owed for the balance of the purchase-money, and that in order to comply with the decree of Judge Harlan, entered in the case, it would be necessary before it could be carried out that Kerr should procure a quit-claim deed or conveyance of Dobbins and wife to the South Park Commissioners, but Mr. Kerr was attempting to get that in anticipation or preparing himself to carry out Judge Harlan's decree, and that a part of the consideration for our negotiations with them of the whole interest was that Kerr might be able to obtain the Dobbins interest, and thereby comply with the decree of Judge Harlan. Each one of the three, Morgan, Walch, and Sherman,

pledged to Mr. Kerr his aid and assistance in that regard, knowing and believing that it would enable Kerr to convey to the park commissioners the whole interest, as provided for by the decree of Judge Harlan.

582 Q. What was the consideration for making the agreement spoken of in writing, Exhibit A to Morgan's answer, on behalf of Mr. Kerr?

A. One of the great considerations and inducements on behalf of Kerr was to get clear of the exceeding-annoying litigation that had sprung up between Dobbins and Kerr. You will find by reference to the record of circuit court of Cook county that very serious litigation had occurred between them and every expensive litigation. Before Judge Harlan's decree could be complied with by Kerr, it was absolutely necessary that the litigation between him and Dobbins should be some way terminated. These three gentlemen that I have named were duly advised of the trouble. Dobbins had gone into bankruptcy. The purchase made by him originally had been transferred to Rhodes and his wife. A creditor's bill had been filed against Dobbins', claiming that this particular interest in the South Park property was Dobbins' property and not Mrs. Dobbins', and asking to subject this very interest to the payment of Dobbins' debts generally, and Mr. Kerr and his agent saw endless litigation growing

583 out of the question as to whether the interest in this property belonged to Mr. or Mrs. Dobbins, or to his creditors under the creditors' bill. To get clear of all that endless and expensive litigation, Mr. Kerr determined to buy out the Dobbins title & litigation at any expense and any cost that might be required.

Q. Did you communicate that to them?

A. I told that to these three commissioners, Morgan, Walsh, and Sherman, and that unless this matter was arranged and adjusted the litigation touching the title of Dobbins' portion of this tract might be almost interminable, through his creditors under his assignment in bankruptcy.

Q. Was these gentlemen that you have named informed you were negotiating for a settlement with Dobbins and for a purchase of his title?

A. They were informed that I had advertised it for sale at least two or three times, and were determined to buy out the Dobbins interest in order to prevent this endless litigation. Each one of them pledged himself to aid me in that regard in order to stop liti-

584 gation, for they all said we must have the title to the land in the park, and go on and improve it, and they would help me in any way in order that the title might be settled.

Q. What I want you to answer is whether you told them that you were actually negotiating to purchase this Dobbins title for Kerr.

A. I told them I was negotiating with Dobbins and had been since July 5, '77, to get the title of Dobbins to Kerr, and that under the decree of Judge Harlan, of October 5th, '78, it became obsolutely necessary for Kerr to procure the Dobbins title before [he] could carry out this decree. I told them all the necessary circumstances connected with my negotiations with Dobbins and asked

that they keep it secret from Price, who was a friend of Dobbins and a neighbor, and he would throw obstacles in the way of my negotiations with Dobbins, and therefore I did not want them to tell him anything about it; they said that they would not tell Price and and would not tell Dobbins of the necessity imposed upon Dobbins by the Harlan decree of his getting the Dobbins title for, as
585 Kerr's attorney construed that decree, he could not recover one dollar of the South Park Commissioner- or any of the land until he had procured Dobbins' title.

Q. Was there any agreement between any of the commissioners and you, acting for Kerr, as to the advance of money to Kerr, pending the consideration by the commissioners of the proposed contract, marked Exhibit A, and what?

A. About November 12th, '79, Dobbins and Mrs. Dobbins had agreed with Kerr to sell and convey to him their interest in the south half of fractional section 13 for $21,000, and an agreement on his behalf that he would consent that a judgment be had against Mrs. Dobbins in the circuit court of the United States for about $69,000 should be set aside and annulled, Mr. Kerr, through his agent, accept that proposition, and through J. I. Bennett borrowed $21,000 from the National Bank of Illinois and paid it over to Mrs. Dobbins on the 12 or 15 of November, of '79, in settlement of the agreement. Both Morgan, Walsh, and Sherman was told of this agreement within three days after it was made, and that Kerr
586 thereby had prepared himself to comply with the terms of Judge Harlan's decree, and delivered his own deed for this land as well as the deeds of all and any persons claiming under him since the commencement of the suit.

Q. You received $7,200 after that from the commission, under what circumstances, and when was that received?

A. In order to perfect the title in Kerr, so that he might comply with Judge Harlan's decree, I deemed it necessary to procure a conveyance from R. E. Jenkins.

Q. Answer the question and state whether that $7,200 came to you, or did you have some arrangement that you were to have a credit, or anything of that kind?

A. I think it was in Feb., 1880, that I received $7,200. I think it was in a check or a warrant of the treasurer of the South Park Commissioners on the treasurer of the board, which was Mr. Schneider, president of the Illinois National Bank. That was paid to me as the attorney-in-fact of Kerr, I think, by James Morgan, under the
587 statement that it was the balance of $90,000 which the park commissioners had placed in his hands to pay to Kerr upon an agreement and understanding that whatever they should pay that amount, being part of it, should be a credit for any amount thereafter found due to Kerr under the terms of the decree by Judge Harlan—to be found by a jury unless Kerr and park commissioners should agree what that sum should be without the intervention of a jury.

Q. State how that sum was secured—the $7,200.

A. Of my own notion and out of abundance of caution to so ar-

range this whole dealing with the So. Park Com'rs that no fault should ever be found with them, that each one of them could say that they had acted honestly and judicially, faithfully, and successfully in this whole transaction between the commissioners and Kerr, I myself directed without a request on their part that a deed made by Jenkins as receiver of Dobbins and Jenkins as assignee of bankruptcy of Dobbins should be placed in the hands of some party where it would secure the South Park Commissioners or the
588 public to the extent of $7,200, and I therefore directed the deed of Jenkins to be made to a gentleman by the name of Ingals, to hold it in trust for the public, of the South Park municipal corporation or to commissioners to secure the $7,200 so paid me by Mr. Morgan. I required Mr. Ingals to give a declaration of trust that he held it for that purpose in addition to a declaration of trust he had formerly given in order to make both that and any other money that the South Park Commissioners may have become liable for to Kerr perfectly safe. Mr. Kerr executed deeds to quit-claim to the South Park Commissioners for his interest in this whole half section and placed them in the hands of Jeremiah Leaming with direction to tender them to the South Park Commission on condition that they would pay him any balance that might ultimately be found due from the South Park Commissioners under the decree of Judge Harlan.

Q. What was the consideration for the deed from Kerr to Rhodes?

A. The moving consideration to Kerr was such an amount
589 of money as he might at that time be compelled to required to use in the litigation with the South Park Commissioners and the aid and assistance and legal services of parties who reside in Illinois and were acquainted with the laws of Illinois and attorneys in and about litigation with South Park Commissioners, who had assumed litigation on behalf of Phillips. Mr. Kerr was comparative- a poor man, a teacher in a female college in Ohio for 27 years, and [had] little money to carry on a litigation with a powerful corporation, and being a resident of Ohio he had neither friends -or income in Chicago to aid him against the corporation which was representing Phillips, and he desired to have the aid and influence of any legal gentlemen resident in Chicago to carry on the litigation at law and assist him and his Ohio agent in the litigation. Mr Dobbins represented that he would get the legal services of Mr. Fuller, of McCagg and Fuller, the legal services of H. S. Monroe, the legal services of E. B. McCagg, and others if necessary,
590 and furnish them at his own expense and costs to aid Mr. Kerr in defending his title against the claim of Phillips.

Q. In the course of this proceeding something has been said about *of* Dobbins and Kerr contract in regard to the sale of this property for the sum of $5,000. What was the consideration of that contract, and when was it?

A. In this negotiation, the sale of an undivided interest, Dobbins and Kerr agreed about one or two or three points in reference to the sale. Mr. Kerr, for the consideration of a little money and legal services that Dobbins promised to render, consented to sell a quarter

interest at much less, as I remember, of about one-third proposed cash value, supposed cash value in money, and the other two-thirds in these services that I have spoken of, but to secure that and carry it out required Mr. Dobbins to agree that although he bought this land at nominally $16.00 an acre in money he would not use or sell the same to the South Park Commissioners or to any who would use the undivided interest against the remaining interest of Kerr without the written consent of Kerr, and that if he should dispose of this interest or that it might be in any way held by a person adversed
591 to the interest of Kerr, that he should forfeit the sum of $50,000; that he would become a partner of Kerr in every respect in reference to this land, and that either of them should not sell without a consultation with or consent of the other, and that it should not be sold to anybody, either the Dobbins undivided interest or the Kerr interest, for less than $5,000 an acre, which was then considered a reasonable, fair, and I may say a low price for the land, and except for such guarantee, pledged, promises, and agreement on the part of Dobbins, and for his agreement to furnish the legal services he would not have got any interest of Kerr in the land.

Q. Was that agreement a part of the consideration of the deed?

A. That agreement was a part of the consideration and was signed before the deed was tendered or offered; it was a part of the contract and consideration itself. It was made, as I remember, about June 3, '72, whereas the deed and payment was not made until November.

Right to cross-examine reserved.

592 In the Circuit Court of the United States for the Northern District of Illinois. In Chancery.

SOUTH PARK COMMISSIONERS, Complainant,

vs.

WILLIAM P. KERR *et al.*, Defendant-.

Testimony taken before Henry W. Bishop, master in chancery of said court, Friday, the 11th day of August, A. D. 1882.

Pres't: Mr. Fuller, for complainant; Mr. Leaming, for defendant.

LLEWELYN CURRY, a witness on behalf of the complainant, being duly sworn, was examined in chief by Mr. Leaming, and deposes and says as follows:

Q. State your name, age, residence, and occupation.

A. Llewelwyn Curry; lawful age; occupation, broker; residence, Chicago.

Q. State whether you are one of the defendants in the suit of South Park Com's *v.* Morgan and others.

A. I am.

593 Q. State what conversation you had about the commencement of this suit and when you knew you had been sued by the South Park Com'rs, with any South Park Commissioner as to your liability, and what they intended by it.

A. I had a conversation with Mr. Walsh, an old friend of mine, to whom I very naturally went after this suit had been begun. I was some uneasy about it, and asked him what I should do, and he laughingly said I need not pay any attention to it; they were not after me.

Q. What did he say in that conversation, if anything, about there being money enough to pay the note you had given to the National Bank of Illinois, or why they would not call upon you for the payment of any money on the notes? State what he said in regard to it.

Objected to as incompetent and leading.

A. We had a talk about it. Of course, he went on naturally to say why I need not pay any attention to it. It is so long I cannot remember distinctly what he did say. My general impression is that there was provision otherwise; that the notes would be
594 paid for by indebtedness due Dunlevy.

Q. By indebtedness of whom to Dunlevy?

A. The inference was, the park commissioners, of course.

Q. Did he give you to understand how that indebtedness of the park com'rs arose?

Objected to as before.

A. We had many conversations about this thing. In that conversation I do not know he went into any explanation as to how that indebtedness arose.

Q. About that time what did he say the indebtedness *or* Kerr was for?

A. For lands.

Q. For what lands?

A. These lands that have been in constant litigation. I cannot say he then and there gave a legal description of the lands, excepting Kerr's lands. I recollect very distinctly he said I need not pay any attention to the suits; that they were not after me, and when I made some reply, that I hadn't money to pay the notes with anyhow, he said, Well, there is plenty of money, enough indebtedness to Dunlevy, enough due Dunlevy to pay off all the notes.

Q. Was Mr. Walsh at that time president of the board?

595 A. He was. We talked a good deal then and there about the money, about what had become of it, how much of it I got, and all that.

Q. Did you tell him how much you got?

A. Yes, sir; I told him I hadn't got any of it; that I was a friend of Judge Dunlevy.

Q. State how long subsequent to that—this suit having been commenced about August, 1880—whether long subsequent to that, say

in 1881 and beginning of 1882, you had any further conversation with Mr. Walsh about this suit, and your liability, upon it; and, if so, what he said.

A. I have had a great many conversations with him. He told me frequently your were fools to litigate it; that they would fight it on up, and keep fighting it, and his successors afterwards.

Q. How long did he say the park com'rs—the present board—intended to litigate this claim?

Objected to as incompetent and immaterial.

Q. Give his expression—litigate it forever?

596 A. Yes, sir; that was his idea; there would be no end to their litigation, and you ought to take what you could get.

Q. Did he say anything about wrecking Dunlevy in the litigation, and breaking them up?

Objected to as leading.

A. I don't remember about that—about his using that language; but that it would be an endless litigation was his constant assertion.

Q. That was his constant assertion—that it would be an endless litigation?

A. Yes, sir. I was endeavoring, as you know, to fetch about a compromise. I think you were inclined to compromise yourself.

Q. You were doing it at whose request?

A. The first message was sent from Walsh to Dunlevy by me.

Q. Was it in connection with his request to you to urge me to compromise that he stated if I did not the litigation would be endless?

A. No; I cannot say he ever sent any word to you of any threat.

Q. Did he say so to you during the negotiation?

A. Yes, sir; he said that often.

Cross-examination waived.

Signature waived.

597 And the defendants Kerr also introduced mandate of the Supreme Court, filed in the cause of the South Park Commissioners *vs.* Kerr in the United States circuit court for the northern district of Illinois in May, 1882, affirming the decree in said cause entered in October, 1878, which is in the words and figures following, to wit:

Mandate.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Whereas lately in the circuit court of the United States for the northern district of Illinois before you, or some of you, in a cause between William P. Kerr, complainant, and John M. Wilson, Paul Cornell, Leverett B. Sidway, George V. Gage, Chauncey T. Bowen,

The South Park Commissioners, Charles P. Philips, and Charles H. Atkins, defendants, wherein the decree of the said circuit court entered in said cause on the 8th day of October, A. D. 1878, is in the following words, viz:

This cause coming on to be heard upon the consolidated bill, answers, and replications and proofs, and having been argued
598 by counsel, and the court being sufficiently advised in the premises, it is ordered, adjudged, and decreed that the defendant, The South Park Commissioners, pay to the complainant, William P. Kerr and his assignees, the value of the premises, on the twenty-seventh day of August, A. D. 1870, known and described as the south fractional half of section thirteen, in township thirty-eight north, of range fourteen east, of the third principal meridian, except lots 9, 10, and 15, in Chas. B. Phillips' subdivision of 26 acres off the west side of the S. W. ¼ of said section thirteen, according to plat of same recorded in the recorder's office of C[illegible] county, in book 98 of maps, p. 9, and the east half of said southwest quarter of said section thirteen, together with interest thereon from the twenty-seventh day of August, A. D. 1870, at the rate of six per cent. per annum, upon the conveyance of said premises by the complainant, William P. Kerr, and his assignees claiming under him since the commencement of this suit, by deed, which shall release to the South Park Commissioners all interest of the said complainant and his assignees. And it is further ordered that
599 the value of said premises required to be paid be ascertained as follows: A jury shall be empannelled in this court on the law side thereof to hear the evidence submitted by both parties, and said jury shall determine by their verdict the value of the land hereinbefore described on the twenty-seventh day of August, A. D. 1870, the time when possession was taken by the South Park Commissioners, and the verdict shall be certified by the clerk to the chancery side of this court, and the amount so found shall be considered as the value of said premises on the day aforesaid unless set aside or changed by the further order of this court.

And it is further ordered that the complainant, William P. Kerr, make a deed and procure deeds to be made by all persons claiming under him since the commencement of this suit, conveying to the South Park Commissioners the premises aforesaid when they shall pay the amount found to be due, with interest from the twenty-seventh day of August, A. D. 1870, at the rate of six per
600 centum per annum, and the court denies any relief to the complainant as to the east half of the southwest quarter of section 13 aforesaid, and it is ordered that the bill of complaint be dismissed as to that part of the premises.

And it appearing to the court that the South Park Commissioners have commenced proceedings to condemn the undivided one-quarter of the west half of the southeast quarter of section twenty-four, in township thirty-eight north, of range fourteen east, of the third principal meridian, another of the tracts described in the bill belonging to the complainant, it is ordered that all questions touching the same be reserved for the further order of the court.

It is further ordered that the question of costs be postponed for the further consideration and order of the court, as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the South Park Commissioners and a cross-appeal taken by William P. Kerr, agreeably to the act of
601 Congress in such case made and provided, — fully and at large appears.

And whereas in the present term of October, in the year of our Lord one thousand eighteen hundred and eighty-one, the said cause came on to be heard before the said Supreme Court on the said transcript of record on appeal and cross-appeal and was argued by counsel:

On consideration whereof, the court being equally divided in opinion, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed, each party paying the costs of their appeal in this court.

12TH DECEMBER, 1881.

You therefore are hereby commanded that such proceedings be had in said cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Morrison R. Waite, Chief Justice of said Supreme Court, the thirteenth day of May, in the year of our Lord one thousand eight hundred and eighty-two.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

602 (Endorsed:) Nos. 90 & 772. October term, 1881. Mandate Supreme Court United States. South Park Comm'rs *v.* Kerr & Kerr *v.* South Park Comm'rs *et al.* Filed May 17, 1882. W. H. Bradley, clerk.

603 The def'ts Kerr also introduced in evidence the following from reports of complainant, South Park Commissioners, as follows, to wit:

Official report of the South Park Commissioners, dated Dec. 1, 1879, to the board of county commissioners of Cook county, for year ending Dec. 1, 1879, * * * showing on page 15 as follows:

"*Expenditures. Land Account.*

"Account of securities on land, frac. S. E. ¼ and S. W. ¼ sec. 13, 38, 14 ---------- $88,669.04."

With other items of expenditure on land account, which report consists of 29 pages, and is signed by all the commissioners.

Also, same report, for year ending Dec. 1, 1880, page 16, as follows:

"*Expenditures. Law Account.*

* * * "Account of purchase of Phillips tract, fractional S. E. ¼ and S. W. ¼ sec. 13, 38, 14 ---------- $7,310 00.'

* * * * * * *

And page 7, as follows:

* * * * * * *

Of the large acreage embraced in the South Park system, including Grand, Drexel, and Oakwood boulevards, and the long stretches of 55th street and Western avenue, the commission has yet to acquire an acre in the West Park, now used as a school lot, condemnation of which will be necessary, inasmuch as the school directors demand, in the option of the commission, an excessive price. Also
604 some three lots on 55th street in which condemnation proceedings are pending, and, though it has possession, it has yet to pay in full for the tract of two hundred acres, or more, in the East Park, known as the Phillips tract. The outcome of the litigation concerning this last-named tract is a matter of anxious consideration with the commission. Ten years ago the commission took possession of the tract under a contract with the putative owner, C. B. Phillips, by which he agreed to sell the same to the commission for $800 an acre, but adverse claimants sprung up, the most conspicuous of whom was one Kerr, who claimed title to the tract by reason of his purchase of the property sold under an execution for a judgment against Phillips. Mrs. Phillips was also a claimant, both as having conveyance from her husband, C. B. Phillips, and as having had a homestead, unaffected by sale under an execution. Kerr filed a bill in the United States circuit court to quiet title, and the litigation thus commenced has not been determined, but, having reached the Supreme Court of the United States, there lingers, with no immediate prospect of a decision. Kerr conveyed an undivided one-fourth in-
605 terest in the tract to Mrs T. S. Dobbins, and it is believed that the court in chancery, where the matter is now pending on a bill filed at the instance of the commission, will declare that the late president of the commission, having expended $90,000 in purchasing securities and endeavoring to obtain some sort of title from the park in this fourth interest, the commission has acquired such interest; or, in any event, that the investment of $90,000 will be held good in some form. The whole matter of the ownership of this tract is so involved between claimants and persons claiming to hold under them that the commission, unable to deal fairly by all where each claims everything, can but await the event of the legal contest. The value of the land will be fixed ultimately, no doubt, by a jury of the United States court.

What its verdict will be is a matter of conjecture only, but there are not wanting prophets who predict that the finding will be totally beyond the commission's means of payment.

The commission is not without anxiety concerning the result, but

its apprehensions are not of this gloomy character. It has no
606 reason to suppose that a jury in a United States court will find an outrageous verdict, and its resources for the payment of land obligations, which will be husbanded carefully, may be considered ample to meet any reasonable demand. The commission will resist and demand that — is otherwise.

These resources are as follows:

Cash to credit land fund	$127,969.32
Due from county treasurer as balance of eight installments of the special assessment for benefits park purchase	26,946.65
Tax deeds and certificates, estimated value	303,448.05
Appealed tax cases, estimated value	131,828.57
Investment in Phillips tract	90,000.00
Total	$680,192.59

The foregoing was all the evidence introduced in said cause, and this certificate is signed and sealed and made part of the record hereof accordingly. Agreed to by counsel.

THOMAS DRUMMOND. [SEAL.]

(Endorsed): Filed August 26, 1882. Wm. H. Bradley, clerk.

607 Afterwards, to wit, on the third day of October, A. D. 1882, there was filed in said clerk's office an appeal bond in said entitled cause, which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, John B. Drake and John C. Dunlevy, of Cook county, State of Illinois, are held and firmly bound unto the South Park Commissioners, a corporation of the same place, in the full and just sum of sixteen thousand dollars ($16,000), lawful money of the United States, to be paid to the said South Park Commissioners, their successors and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, and respectively, by these presents.

In witness whereof we, the said John B. Drake and John C. Dunlevy, have hereunto set our hands and seals this nineteenth day of September, A. D. 1882.

The condition of this obligation is such that whereas at a term of the circuit court of the United States for the northern district
608 of Illinois, in a suit pending in said court, on the chancery side thereof, between the said South Park Commissioners, as complainants, and Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors of William P. Kerr, deceased, and others *are* defendants, a decree was entered August twenty-sixth, A. D. 1882, against said defendants in said cause;

And whereas an appeal was allowed said defendants by the said court unto the Supreme Court of the United States:

Now, therefore, the condition of this obligation is such that if the said appellants, Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, shall prosecute their appeal to effect and abide the judgment of the court and answer all costs and damages if they shall fail to make good their plea in that behalf, then this bond to be void; otherwise to remain in full force and effect.

JOHN C. DUNLEVY. [SEAL.]
JOHN B. DRAKE. [SEAL.]

Attest: THOMAS J. MORGAN.

(Endorsed:) Approved Oct. 3, 1882. Thomas Drummond. Filed October 3, 1882. Wm. H. Bradley, clerk.

609 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be true and complete copies of the bill, answer of Ingalls, petition, and order filed October 28th, A. D. 1880; of the answer of Wm. P. Kerr, filed December 13th, A. D. 1880; of the replication of the South Park Commissioners to the answer of James Morgan *et al.*, filed July sixth D. 1881; of the amendment to Ingalls' answer filed February twentieth, A. D. 1882; of the bill of revivor and amendments thereto filed June 12th, A. D. 1882; of the copy of the bill and amendments (excepting the exhibits) filed June 30th, A. D. 1882; of the answer to the amended and supplemental bill filed July 17th, A. D. 1882; of the appeal bond filed October third, A. D. 1882; together with the certificate of evidence and all the papers therein called for, and all of the orders entered of record in said court in said entitled cause, wherein the South Park Commissioners are the complainants, and Susie M. Kerr, Rosa L. Kerr, and
610 Joseph B. Kerr, executors, &c., *et al.* are the defendants, as the same appear from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this twelfth day of October, A. D. 1882.

[Seal of Circuit Court U. S., Northern Dist., Illinois. 1855.]

WM. H. BRADLEY, *Clerk.*

Endorsed on cover: N. Illinois C. C. U. S. No. 124. Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors of William P. Kerr, deceased, appellants, *vs.* The South Park Commissioners. Filed 16th October, 1882.

117-379+388

117-379-388

ABSTRACT OF RECORD.

Supreme Court of the United States,

OCTOBER TERM, A. D. 1885.

No. 124.

SUSIE M. KERR, ROSA L. KERR AND JOSEPH B. KERR, EXECUTORS AND DEVISEES OF WILLIAM P. KERR, DECEASED, APPELLANTS,

vs.

THE SOUTH PARK COMMISSIONERS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1885.

No. 124.

SUSIE M. KERR ET AL., EXECUTORS, ETC., APPELLANTS,

vs.

THE SOUTH PARK COMMISSIONERS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT,
NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

Partial Abstract of Record, printed in connection with Motion to Advance Cause No. 1142 to be heard with No. 124.

DECREE OF JUDGE DRUMMOND.

AUGUST 26, 1882.

This cause having been heard prior to the death of Wm. P. Kerr, one of the then defendants herein, and said Wm. P. Kerr having departed this life testate on or about the 15th day of April, 1882, and his will having been duly admitted to probate in the State of Ohio, on or about May 31, 1882, and said cause having been duly revived as to Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr, his executors and devisees under said will, and they having duly appeared and answered herein, as well as the defendant James R. Doolittle.

And thereupon this cause coming on again to be heard upon the bill of complaint as amended, and upon the demurrer of Elizabeth Ann Phillips and the answers of said Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr and James R. Doolittle, Frederick A. Ingalls, John I. Bennett, Frank I. Bennett, Charles B. Phillips, and the replications thereto, and upon the evidence taken and reported by the master herein, and the documentary evidence adduced upon the hearing, and arguments being had and the court being now fully ad-

vised in the premises, the court finds that in the year 1872 said Wm. P. Kerr sold to said Mary C. Dobbins the undivided one-fourth part of the south half of fractional section 13, town 38, north of range 14, east of third principal meridian, in Cook county, Illinois, save and except the north one-third of lot 3, and excepting also lots 9, 10, 11, 15 and 16 in Charles B. Phillips' subdivision of the western part of said half section for the sum of $80,000, $30,000 paid in cash and $50,000 in two notes of Thomas S. Dobbins for $25.000 each, due in one and two years respectively from June 1, 1872, with interest at eight per cent. per annum, payable semi-annually, and said Kerr conveyed the same by deed dated October 12, 1872, to Daniel P. Rhodes of the city of Cleveland, in the State of Ohio, who gave a trust deed upon said property to secure said two notes of Thomas S. Dobbins, part of the purchase price of said property to Daniel Jones, trustee, and John B. Drake, successor in trust, dated November 26, 1872, and thereupon said Rhodes conveyed the same to said Mary C. Dobbins by deed dated November 26, 1872, subject to said trust deed, the notes secured by which she assumed and covenanted to pay.

That subsequently said Dobbin's notes came into the possession of the complainant and in November 1879, the title of said Mary C. Dobbins in and to said real estate was conveyed to F. A. Ingalls by deed of said Mary C. Dobbins and Thomas S., her husband, dated November 12, 1879, and in February 1880, all interest, if any of Jenkins, receiver, etc., and Jenkins, assignee in bankruptcy of Thomas S. Dobbins, was conveyed to said Ingalls by deeds as follows: Deed of Robert E. Jenkins, receiver, etc., to Ingalls, dated February 17, 1880; deed of Jenkins, assignee, etc., to F. I. Bennett, dated February 25, 1880, and deed of F. I. Bennett to Ingalls dated February 25, 1880, and that said Ingalls has upon his offer to do so contained in his answer as amended under direction of the court conveyed to James R. Doolittle, and that under the facts and circumstances disclosed upon the pleadings and evidence herein, the said Susie M. Kerr, Rosa L. Kerr and Joseph C. Kerr, executors and devisees of said Wm. P. Kerr, deceased, are entitled upon payment of the sum of $90,000 to the complainant with interest on the sum of $82,800 parcel of said $90,000 from November 29, 1879; and on the sum of $7,200, the balance of said $90,000 from February 26, 1880, at six per cent. per annum to have the title to the said undivided one-fourth of south one-fourth of fractional section 13, town 38, range 14, vested in defendant F. A. Ingalls by the deeds of Mary C. Dobbins and her husband and Jenkins, receiver and assignee, etc., and now vested in James R. Doolittle, conveyed to them, said executors and devisees of said Kerr, and that if said payment is not made within the time herein fixed, then that the complainant, the South Park Commissioners, is entitled to have said land conveyed to it upon payment to said executors and devisees of the sum of $3,454.17,

and interest thereon at eight per cent. from February 26, 1880, and that in either event the trust deed of Rhodes to Jones in the pleadings and evidence described should be declared satisfied, and the notes of Thomas S. Dobbins for $25,000 each, of W. K. Nixon for $30,325, L. Curry for $30,225, L. Curry for $7,200 and J. I. Bennett for $21,000 be canceled.

And the court further finds that the contract in the pleadings mentioned as attempted to be entered into between the South Park Commissioners and said Kerr, of date of May 14, 1879, or November, 1879, was never consummated, nor operative and binding upon said complainant, and that there is no equity in the cross-bill of complainant, Chas. B. Phillips, filed herein, and that the cross-bill of John I. Bennett is unnecessary.

It is therefore ordered, adjudged and decreed that the bill of complaint be, and it is hereby dismissed as to the defendant, Frank I. Bennett, Charles B. Phillips and Elizabeth Ann Phillips at the costs of the complainant, and that the cross-bills of Charles B. Phillips and John I. Bennett be and they are hereby severally dismissed without prejudice.

It is further ordered, adjudged and decreed that the said defendants, Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr, executors and trustees as aforesaid, pay to the complainant, the South Park Commissioners, the sum of $82,800 with interest from November 29, 1879, and the sum of $7,200 with interest from the 26th of February, 1880, within ninety days from the date of the entry hereof, the interest thereon being six per cent., and that thereupon said James R. Doolittle convey to said Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr, executors, etc., the undivided one-fourth of the South one-half of fractional Section 13, Town 38, North, Range 14, East, in Cook county, Illinois, as held by him as trustee.

And it is further ordered, adjudged and decreed that if said Susie M: Kerr, Rosa L. Kerr and Joseph B. Kerr, executors, etc., shall fail to make such payment within the time so fixed as aforesaid, then the said South Park Commissioners shall pay into court the sum of $3,454.17, for the use of said Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr, executors, etc., together with 8 per cent. interest thereon from the 26th day of February, 1880, and the proper deposit charges thereon, and thereupon said James R. Doolittle shall convey to said South Park Commissioners said undivided one-fourth part of the south half of fractional section 13 aforesaid, held by him as trustee, who shall thereupon hold the same discharged of the encumbrance created by the trust deed of Daniel P. Rhodes to Daniel Jones, trustee, as aforesaid, but if said South Park Commissioners fail to make such last mentioned payment within ten days after the expiration of said ninety days, and the failure by defendant Kerr to pay said corporation as aforesaid, then this bill shall stand dismissed at complainant's cost.

And it is further ordered, adjudged and decreed, that upon compliance with this decree by said Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr, executors, etc., or on failure thereof, upon the conveyance of said real estate to said South Park Commissioners, the notes of Thomas S. Dobbins secured by the trust deed of Rhodes to Jones, trustee, for $25,000 each, and the notes of J. I. Bennett for $21,000, of Curry for $30,325, of W. K. Nixon for $30,335, and of L. Curry for $7,200, be and they are hereby declared canceled and satisfied.

And it is also ordered, that the said cause be dismissed as to the defendants Wm. K. Nixon, National Bank of Illinois, Llewellyn Curry, Thomas S. Dobbins, Mary C. Dobbins, R. E. Jenkins, assignee and receiver, and John C. Dunlevy, at costs of the complainant.

And it is ordered that the costs herein to be taxed, except the costs in respect to the defendants as to whom this cause is dismissed, and the costs upon the cross-bills aforesaid, be paid in equal shares by said complainant and said defendants.

And the said Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr, executors, etc., pray an appeal to the Supreme court, which is allowed on their giving bond according to law.

EDWARD S. ISHAM,

Of Counsel for Kerr et al., Executors, etc.

117-379 & 388

IN THE -388

Supreme Court of the United States,

OCTOBER TERM, A. D. 1885.

SUSIE M. KERR ET AL., *Appellants*,
vs.
THE SOUTH PARK COMMISSIONERS, *Appellees*.
No. 124.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

ADDITIONAL RECORD.

UNITED STATES CIRCUIT COURT—NORTHERN DISTRICT OF ILLINOIS.

FRIDAY, December 1, A. D. 1882.

Present: Hon. Thomas Drummond, Circuit Judge.

The South Park Commissioners
vs.
Susie M. Kerr, Rosa L. Kerr and Joseph B. Kerr, Executors and Devisees of William P. Kerr, deceased, and others.
In Chancery.

Now come the South Park Commissioners, the said complainants herein, by M. W. Fuller, Esq., their solicitor, and pay into court the sum of four thousand two hundred and sixty-two dollars and forty-two cents, being

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1885.

SUSIE M. KERR ET AL., APPELLANTS,
vs.
THE SOUTH PARK COMMISSIONERS, APPELLEES.
No. 1142.

To M. W. Fuller, Esq., Solicitor for said Appellees;

Please take notice that on Monday, December 7, 1885, at twelve o'clock noon, or as soon thereafter as counsel can be heard, I shall move the court to advance the above entitled cause, number 1142 of the present calendar to be heard by the court with cause number 124 of the same calendar, and similarly entitled, under the provisions of the fourth and eighth clauses of rule twenty-six of said court, and upon the grounds stated in the suggestions in support of this motion and printed and filed herewith.

CHICAGO, November 28, 1885.

EDW'D S. ISHAM,
Solicitor and of Counsel for Appellants.

Susie M. Kerr, *et al.*, Appellants,
vs.
The South Park Commissioners.

Sufficient notice of motion to be made by appellants on Monday, December 7, 1885, to advance the above entitled cause to be heard with No. 124 of the present calendar is hereby acknowledged.

CHICAGO, November 28, 1885.

M. W. FULLER,
Appellee's Solicitor, and of Counsel.

Susie M. Kerr *et al.*, Appellants,
vs.
South Park Commissioners, Appellees. } No. 1142.

MOTION.

And now come the appellants in the above entitled cause by Edward S. Isham, their solicitor, and move the court that the said cause may be ordered, under clauses 4 and 8 of rule 26 of this court, to be advanced for hearing upon the calendar of the court for the present term, so as to be heard in connection with the cause similarly entitled, and being number 124 of the same calendar, upon grounds stated in suggestions in support of this motion filed herewith.

November 28, 1885.

EDWARD S. ISHAM,
Solicitor and of Counsel for said Appellants.

Suggestions in Support of the Foregoing Motion.

I.

This motion to advance the cause No. 1142, so that it may be heard with No. 124, between the same parties, is made at this time in connection with a motion of the appellees to strike from the record of No. 1142 a certificate made by the Circuit court, incorporating into this chancery record certain evidence and rulings of the court, and directions of the judge to the jury, occurring on the trial of an issue at law out of the chancery side of the court. The issue was directed, under the mandate of this court, to ascertain the value of a tract of 111 acres of land, which by a decree of the Circuit court, affirmed by this court on appeal, had been ascertained to belong to the present appellants. The mandate is printed and shown at page 1 in the "abstract of record" of No. 1142, filed by appellees in connection with their motion aforesaid to strike the certificate of the Circuit court from the record.

This cause (No. 1142), therefore, has within the 4th clause of rule 26, been "once adjudicated by this court upon the merits, and is again brought up by appeal." The matter brought here for review consists only of the proceedings of the court below in execution of the mandate of this court, dated May 13, 1882.

II.

We print and file with this motion a "Partial Abstract" of the record in cause No. 124, being that part which shows the decree of the court below in that case.

A reference to that decree shows that an undivided part of the 111 acres, held by this court to belong to the present appellants, was sold by them to one Dobbins, and certain securities, *including a deed of trust, by way of mortgage*, taken for part of the purchase money. This property was afterward in effect re-purchased; and these securities were hypothecated at a bank to secure certain notes for money borrowed by appellants to make payment on the re-purchase. The notes given to the bank were bought up by the appellees, who thereby came to hold the hypothecated securities. The court below held the amount paid by the appellees to be a lien upon the part of the land sold by the appellants, and embraced in the deed of trust, and decreed that the appellants should repay the amount and interest to the appellees within a fixed time, and in default of that decreed in effect a *strict foreclosure* of the lien, and that upon payment of a small additional sum by the appellees into court they should have title at once to the land.

By effect of this decree (in No. 124) if it is affirmed, the appellees became the purchasers of this part of the land. It made an end of the relations of the appellants to this part of the land (an undivided quarter), and it became the property of the appellees, the South Park

Commissioners. It remained only to ascertain the value of the remaining three-fourths.

But in the proceedings shown in the record in No. 1142, and in the first decree entered in that case, this payment by the commissioners is not so treated. The judgment is shown in the "Abstract of Record," printed with the motion of appellee, above mentioned, at page 5. There what under the first decree is the ascertained purchase money of the parcel sold to Dobbins, is treated as so much received by the appellants *on account* of the value to be ultimately fixed upon the whole 111 acres, and by the order of the court it is credited as a part payment upon the amount of the verdict of the jury, ascertained by the proceedings shown in the evidence, etc. which the appellees now move to have stricken from the record in this court.

It is apparent, therefore, that the decree in 124 and that in 1142 affect the same subject matter, between the same parties, and are inconsistent. They cannot both be executed. For that reason both decrees ought, under clause 8, rule 26, to be under the consideration of the court at the same time.

EDWARD S. ISHAM,

Solr. and of Counsel for Appellants.

117-379-388

Office Supreme Court U. S.
FILED
DEC 7 1885
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 1142.

SUSIE M. KERR *et al.*, APPELLANTS,

vs.

THE SOUTH PARK COMMISSIONERS, APPELLEE.

SUGGESTIONS FOR APPELLEE IN OPPOSITION TO MOTION OF APPELLANTS TO ADVANCE THIS CAUSE TO BE HEARD WITH NUMBER 124.

No. 1142 and No. 124 are two separate causes upon the calendar of this court. This motion is not a motion to postpone No. 124 to be heard with No. 1142, but is a motion to advance No. 1142 to be heard with No. 124. The motion is made under the twenty-sixth rule, and I submit that it cannot be granted for two reasons:

First. The appellee resists the motion, and this court has decided in *Louisiana* v. *New Orleans*, 103 United States, 521, that a cause will not be advanced against the resistance of one of the parties.

Second. Cases are never heard together as one case unless they are cases "involving the same question," in the language of the eighth clause of the twenty-sixth rule.

The principal questions involved in these two cases are not the same questions, nor is either of them.

Reference is made by counsel for the motion to the fourth

clause of Rule 26, and No. 1142 is said to be a cause which has been "once adjudicated by this court upon the merits, and is again brought up by appeal." But that which was adjudicated is not again so brought up.

What was adjudicated by the decree of October 8, 1878, was that of the entire tract of land in controversy in the cause, consisting of one hundred and ninety-one acres, eighty acres did not belong to the Kerrs, and one hundred and eleven acres did.

What was not then adjudicated by the circuit court and never heretofore brought in question here upon appeal was the value of the one hundred and eleven acres. That value has since been ascertained and a final decree entered January 20th, 1885, in respect thereto, and from that decree this appeal is prosecuted.

The cause numbered 124 will be found when the record is printed to be this:

In 1872, three years after the first original bill in No. 1142 was filed, which was September, 1869, and two years after the second original bill was filed (October, 1870), which two bills were consolidated and proceeded to the decree of October 8, 1878, W. P. Kerr sold to Dobbins and conveyed an undivided one-fourth of the whole tract of one hundred and ninety-one acres (or 47¾ acres) to Rhodes and Rhodes to Mrs. Mary C. Dobbins. In 1879, after the South Park Commissioners had perfected its appeal from the decree of October 8, 1878, to this court, an attempt was made by some members of the board of South Park Commissioners and the agent of Kerr, J. C. Dunlevy, to arrange the whole controversy, and a contract was prepared, which was signed by J. C. Dunlevy, but never adopted or authorized or signed by the board. In connection with this attempt $82,800 of the money of the South Park Commissioners came to the hands of Kerr November 29, 1879, and $7,200 February 26, 1880, and this money was used in whole or in part in getting up the Dobbins interest and the mortgage given to

secure the alleged purchase-money. In about 1881 the South Park Commissioners filed its bill in the State court against Kerr and others to have the alleged contract declared void and its money returned, which was subsequently transferred to the United States circuit court, and went to decree in August, 1882, from which decree the Kerrs appealed to this Court, which is No. 124.

The South Park Commissioners claimed the right to follow the trust-money into the land. The defendants, Kerr, insisted the money should be applied on the amount found as the value of the land in the main case, with interest from the respective dates of its payment.

When, on the 20th of January, 1885, the final decree as to the value was entered, (being $155,400, with interest, making about $290,000), it appeared from the verdict of the jury that the land was valued at $1,400 an acre, which would make for 47¾ acres, with interest at six per cent. from August 27, 1870, over $124,000 to be applied on the whole amount, while the payments themselves (treated as payments merely), with interest, made only something over $117,000 to be applied. The chancellor accordingly, after inspecting the record in No. 124, simply applied the money as payments, with interest, which is exactly what the appellees claimed in No. 124 should be done. This left about $143,000 to be paid in, which was done.

This adjustment was made by the chancellor in order to determine what amount the South Park Commissioners should pay into court in No. 1142, and has no relation to the issue as to the value of the land. The payment into court was rendered necessary by the inability of the Kerrs to give title to the land by reason of conveyances and claims, and, besides that, the Kerrs appealed, and would neither give deeds nor take the money.

It is true that on this mere question of payments the record in No. 124 must be resorted to if appellants design hereafter to controvert the correctness of the amount paid

into court by the South Park Commissioners, but the questions actually litigated in No. 124 are not questions in No. 1142.

This court may possibly reach a conclusion in No. 124, which could be resorted to by appellants in No. 1142, not to procure a reversal of the decree in the latter case, but to obtain a modification of some of the details as to the amount which should have been paid in, and that is all.

The motion to strike out the alleged bill of exceptions or certificate of evidence being sustained, nothing will remain in No. 1142 for appellants to question unless it be this matter of the payment into court, and in that view No. 124 might be postponed to be heard with 1142, but that would be somewhat of a hardship, as the case ought to be disposed of when it is reached. But, under the rule, appellants' counsel can fully argue in No. 124 any question they suppose may arise in 1142, and that is all that they are entitled to.

Respectfully submitted,

MELVILLE W. FULLER,
For Appellee.

117-379+386

Office Supreme Court U. S.
FILED.
JAN 18 1886
JAMES H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1885.

SUSIE M. KERR ET AL.,
Appellants,
vs.
THE SOUTH PARK COMMISSIONERS,
Appellees.

No. 124.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

ARGUMENT FOR APPELLANTS.

ISHAM & LINCOLN,
OF COUNSEL FOR APPELLANTS.

BARNARD & GUNTHORP, LAW PRINTERS, 44 & 46 LASALLE ST., CHICAGO.

a lien upon the part of the land sold by the appellants, and embraced in the deed of trust, and decreed that the appellants should repay the amount and interest to the appellees within a fixed time, and in default of that decreed in effect a *strict foreclosure* of the lien, and that upon payment of a small additional sum by the appellees into court they should have title at once to the land.

Upon this state of the record error is assigned in this, that the proceeding was in effect the foreclosure of a mortgage lien, and the decree which directed the transfer of the title to the appellees without sale of the property and without any right of redemption was erroneous under the rulings of this court in *Brine* v. *The Hartford Fire Insurance Company*, 96 U. S., 627, and other cases.

EDWARD S. ISHAM,
Of Counsel for Appellants.

117-379
JAN 18 1886
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1885.

SUSIE M. KERR, ROSA L. KERR and JOSEPH B. KERR, Executors of William P. Kerr, deceased,
Appellants,
vs.
THE SOUTH PARK COMMISSIONERS,
Appellees.

No. 124.
Appeal from the Northern District of Illinois.

Brief and Argument for the South Park Commissioners.

MELVILLE W. FULLER,
FOR SOUTH PARK COMMISSIONERS.

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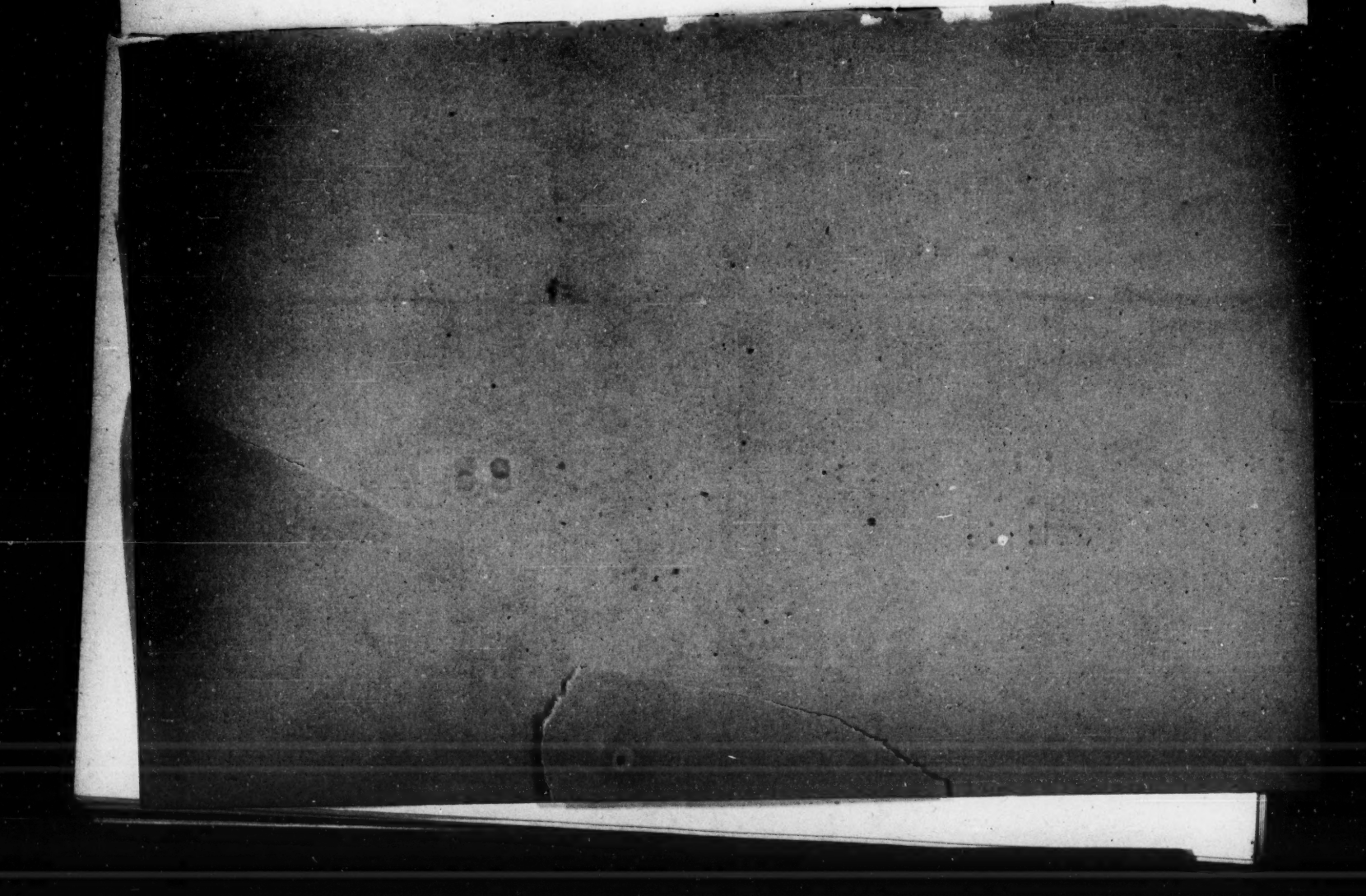

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MAY IT PLEASE YOUR HONORS:

The controversy in this case was over one point only. It was admitted that the Kerrs had received $90,000 of the moneys of the South Park Commissioners, $82,800 November 22, 1879, and $7,200 February 26, 1880.

The South Park Commissioners claimed they could follow this money into forty-seven and one-sixth acres of land, which had been purchased by Mary C. Dobbins October 12, 1872, of William P. Kerr.

The defendants Kerr claimed that the money was received on account and to be applied at the date of receipt

to be allowed, with six per cent. interest from that date, on whatever sum was awarded by a jury for so much of the tract as belonged to Kerr under a decree rendered by Judge Harlan October 8, 1878, in a cause in the United States Circuit court within and for the Northern district of Illinois, wherein Kerr was complainant and the South Park Commissioners defendants, being number 1,142 on the present calendar of this court. This money was received by the Kerrs in the course of a negotiation to settle the controversy over the whole land, which negotiation fell through.

The bill was filed October 28, 1880, against William P. Kerr, John C. Dunlevy and others, in the Circuit court of Cook county, and was subsequently removed upon the application of Kerr into the Circuit court within and for the Northern district of Illinois. The bill involved the inquiry as to some ninety thousand dollars of South Park money which had come to the hands of William P. Kerr under the circumstances hereinafter given, and the ownership of the undivided quarter of the South half of fractional section 13, T. 38, N., R. 14, E. of the 3d P. M., excepting five acres and one-third therefrom, and an answer thereto was filed on the 13th day of December, 1880, by William P. Kerr, and he therein said:

"That he claims to have and has a good and indefeas-
"ible title to said south half of fractional section 13, T.
"38, R. 14 E. as described in said bill, containing two
"hundred and twenty-four acres, and that neither the
"South Park Commissioners, complainant, nor any of his
"co-defendants named in said bill have any title to or in-
"terest in said land or premises in said bill described, ex-
"cept that said South Park Commissioners, on August
"27th, 1870, obtained possession thereof and have ever
"since used the same for park purposes, *and are entitled*
"*to a credit as part payment as purchaser of said land*

"*from this defendant, of eighty-two thousand, eight hun-*
"*dred dollars, with interest from November 14th, 1879,*
"*and of about seven thousand, two hundred dollars, with*
"*interest from February 26th, 1880, to be entered and*
"*given by this defendant upon and against the price and*
"*value of said half section of land when the same shall be*
"*taken and condemned by the South Park board and the*
"*value thereof and the damages accruing to him therefor*
"*shall be ascertained* and fixed by a jury in the Circuit
"court of the United States for the Northern district of
"Illinois, under and according to the terms of an agree-
"ment between the parties and a decree entered by the
"Hon. John M. Harlan, on October 8th, 1878, in said
"court, as will more fully appear by the orders and de-
"cree in said cause, and the contracts and agreements
"between the parties hereinafter set forth.

"This defendant further answering, says that about
"May 25, 1879, after some four months negotiations be-
"tween this defendant by his attorney-in-fact, John C.
"Dunlevy, and three members (being a majority) of said
"board of South Park Commissioners, to wit: John R.
"Walsh, John B. Sherman and James Morgan, in and
"about a compromise and adjustment of the litigation in
"and about the title to and value of the south half of
"said fractional section 13 described in said bill, they had
"fully agreed upon the terms of said compromise and
"settlement and reduced the same to writing; that in the
"beginning of such negotiations it was agreed that the
"same should be conducted with said members (being a
"majority of said board) alone, and that everything
"touching the same should for good and sufficient rea-
"sons (which will be developed upon the trial of this
"cause) be kept secret from Cornelius Price, one of said
"park commissioners, until a conclusion should be reached
"and the whole matter brought before the entire board
"for adoption. Mutual pledges of honor were given that
"if a satisfactory conclusion could be reached *then* the
"same should be honestly and cordially carried out by the
"said three members of the said South Park board (be-
"ing a majority) in and at a regular board meeting to be
"held thereafter; and it was further agreed and under-
"stood that said South Park Commissioners should aid

"this defendant by advice and counsel and an advance of "money and full co-operation to carry out his part of the "agreement to adjust and settle liquidation about said "lands, and perfect the title to the same in himself or in "said park commissioners under said agreement, which "is substantially set out in the contract between the "parties, being Exhibit 'A' to the answer of said James "Morgan in this cause, and which is for brevity hereby "referred to and made a part hereof.

"It was further agreed during said negotiations that if "for any reason the Board of South Park Commissioners "should fail, refuse or be unable to approve, ratify, ac- "cept and agree as a corporate body to carry out said "contract when the same should be brought before a full "board in regular meeting, that then any money advanced "by them or by their agency, in view of such settlement, "compromise and adjustment, and in furtherance of said "contemplated contract should stand, and with interest be "credited as an advance payment on defendants' whole in- "terest in said land when the value of the same should "be fixed and ascertained as aforesaid.

"That said agreement was reduced to writing and "signed by defendant, by his attorney in fact, and by R. "S. Thompson, agent of said commission, and delivered "to R. S. Thompson, the agent of said South Park Com- "missioners, and that in accordance therewith this de- "fendant executed the deeds, as per agreement and con- "tract required, and tendered the same to said South "Park Commissioners, and the same were laid before and "tendered to said board in accordance with said agree- "ment, at its regular meeting, on the 21st day of No- "vember, A. D. 1879; that at said regular meeting said "board failed to approve the same, and has ever since "refused to ratify, approve or accept the same, and said "board claims and insists that it is not bound by any such "contract, agreement, or understanding between it and "this defendant." (P. Rec., 20, 21.)

The property in question had been deeded to Frederick A. Ingalls, as will hereafter appear, and inasmuch as a question arose about the jurisdiction of the United States court, a deed was given by Ingalls to James R. Doolittle,

of Wisconsin. The cause was heard before his Honor, the Hon. Thomas Drummond, and decided by him in May, 1882, and his opinion will be found upon pages 246 to 250, inclusive, of the printed record. He held in favor of the complainant, but that the bill required amendment. In the meantime, on or about the 15th day of April, A. D. 1882, after the cause had been heard by Judge Drummond, but before he announced his decision, William P. Kerr died, and on the 12th day of June, A. D. 1882, a bill of revivor in the cause was filed by the South Park Commissioners, and the cause revived as to Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, executors and trustees under the will of said William P. Kerr, deceased, and on the same day, viz., the 12th day of June, the complainant, the South Park Commissioners, filed its amended and supplemental bill in said cause, which amendments will be found on page 33, *et seq.*, of the printed record, and on the 30th day of June, A. D. 1882, at the request of defendants, an engrossed copy of the original bill and amendments was filed, which will be found on pages 36 to 45 of the printed record.

The bill, as amended, charged that in 1872 Mary C. Dobbins purchased of William P. Kerr the undivided one-fourth of the south half of fractional section 13, etc., for the sum of eighty thousand dollars, thirty thousand dollars in cash and the balance in two notes of Thomas S. Dobbins for $25,000 each, payable in one year and two years from the first day of June, A. D. 1872, with interest. That said Kerr conveyed said undivided one-quarter for Mary C. Dobbins, to one Daniel P. Rhodes, who executed a trust deed to Daniel Jones to secure the two notes of Thomas S. Dobbins, above mentioned, and then, and about the 26th of November, A. D. 1872,

Rhodes conveyed the real estate to Mary C. Dobbins, she assuming the payment of the notes of Thomas S. Dobbins, but this deed was not recorded until 1876. That in May, 1879, the National Bank of Illinois advanced $60,000, upon the assurance that such advance was for the benefit of the South Park Commissioners, and would be paid by that corporation, which money was paid to Kerr, and said bank received the notes of Thomas S. Dobbins, before referred to, and also two notes, one of W. K. Nixon for $30,325, and one of Llewellyn Curry for $30,225, but the advance was not made on the credit of these notes, which the evidence showed were given without consideration, and were merely accommodation paper. That in November, 1879, the bank made an advance of $21,000, on the assurance that such advance was for the benefit of the South Park Commissioners, and would be paid by that corporation, and said bank received the note of John I. Bennett for $21,000, but did not make the advance on the credit thereof. This note was given merely as an accomodation. That the $21,000 was paid to Mrs. Mary C. Dobbins, and she and her husband, Thomas S. Dobbins, executed and delivered to Fred. A. Ingalls a deed of said undivided one-fourth. That on the 21st of November, 1879, the said South Park Board passed a resolution to this effect: "That the president of this board is hereby authorized to "make such settlement and adjustment of the litigation "regarding the south half of fractional sec. 13, 38, 14, "and such purchase of the title thereto as in his judg-"ment may be advisable, and for that purpose to draw "from the treasurer of this commission a sum not ex-"ceeding the sum of ninety thousand dollars before re-"porting the same to this board, and that the auditor is

"hereby instructed to sign the necessary warrant for "said sum of money, or so much thereof as called for." That said resolution was adopted for the purpose of acquiring all the right, title and interest of Mary C. Dobbins and her husband, Thomas S. Dobbins, in and to the said undivided one-fourth of said south half of fractional section 13, and in pursuance thereof a warrant for $82,800 was duly issued by the South Park Commissioners on the 22d day of November, 1879, and was delivered and the money paid to the National Bank of Illinois, which thereupon delivered to James Morgan, then president of the board of South Park Commissioners, the said notes of Thomas S. Dobbins for $25,000 each, the note of Curry for $30,225, and the note of Nixon for $30,325, the note of J. I. Bennett for $21,000, and a paper signed by F. A. Ingalls, declaring that he held title of Mrs. Dobbins and husband to secure the said note of said Bennett. That on the 25th day of February, 1880, conveyances were made by R. E. Jenkins, assignee in bankruptcy of Dobbins, to F. I. Bennett, and from Bennett to F. A. Ingalls, and from Jenkins, receiver of Dobbins, to Ingalls, which were executed and delivered to Ingalls on or about the 26th day of February, 1880, on which day the warrant of the South Park Commissioners for $7,200, making together $90,000 in all, was delivered to W. P. Kerr and the money named therein paid to him, and said Curry executed a note for $7,200, which was handed to Morgan, and said Ingalls made a further declaration that he held such title as was derived under the deeds of Jenkins to secure the notes of Bennett and Curry, which was also delivered to said Morgan. That the $90,000 was paid by the complainant in the acquisition of the Dobbins title to said undivided one-fourth of the south one-half of said

fractional section thirteen, and that James R. Doolittle, who held under direction of court by conveyance of said Ingalls, as was also stated by way of supplement in the amended bill, should be decreed to convey to the South Park Commissioners, and thereupon the notes of Curry, Nixon, Bennett and Dobbins should be canceled.

On the 17th day of July, A. D. 1882, Susie M. Kerr and others filed their answer to the amended bill. They admitted the purchase by Mrs. Dobbins, the conveyance to Rhodes, the execution of the encumbrance and the conveyance by Rhodes to Mary C. Dobbins. They admitted the receipts of the warrants for $82,800 and $7,200. They denied that the sum of $90,000 was paid out in the acquisition of the Dobbins title and averred "that the said sum of $90,000 "should stand only as a credit to said complainant for so "much money paid to these defendants on account of the "large sum of money found to be due and payable to "these defendants by said complainant in accordance with "the terms of the decree of the United States Circuit "court heretofore entered by Mr. Justice Harlan as here-"inafter recited." They then set up that during the spring of 1879 and after the entry of the decree before Judge Harlan negotiations were pending between the president and two other members of said South Park commission and said Kerr, in his lifetime, looking to a settlement of the entire litigation between said complainant and said Kerr. That an agreement of settlement was arrived at and reduced to writing, a copy of which is attached to Mr. Morgan's answer herein, marked Exhibit A, excepting the date thereof. They then set up the advance of the moneys in question by the bank and allege that it was agreed between Kerr and the president of the

board and two other commissioners that in consideration of Kerr's signing the agreement "said complainant would "take care of said loan and protect said securities, and "that whatever sum of money should be advanced by "said complainant in so doing *should stand as a part pay-* "*ment to said Kerr under the decree entered by Justice* "*Harlan as aforesaid, with interest thereon at the rate of* "*six per cent. per annum from the date of such advance.*"

That the written agreement was brought before the board of South Park Commissioners on the 21st day of November, A. D. 1879, but its consideration was postponed to a future meeting, yet that the board adopted the resolution hereinbefore spoken of. They then allege that the $7,200 was advanced upon an agreement "between "said president and said Kerr that said sum of $7,200 "*should stand as a part payment on the amount due said* "*Kerr from said complainants under the said decree en-* "*tered as aforesaid in this court by Justice Harlan, with* "*interest thereon at six per cent. per annum from the date* "*of such advance.*"

Leave was given to the defendants to take additional testimony, and the cause was brought on again for hearing and again decided on the 26th day of August, 1882. The decree will be found on pages 54 to 57, inclusive of the printed record. The court found that "the contract "in the pleadings mentioned as attempted to be entered "into between the South Park Commissioners and said "Kerr, of date of May 14, 1879, or November 1879, was "never consummated nor operative and binding upon said "complainant." And it was adjudged and decreed that the said defendants Kerr and others "pay to the com- "plainant, the South Park Commissioners, the sum of "eighty-two thousand eight hundred dollars, with interest

"from November 29, 1879, and the sum of seven "thousand two hundred dollars, with interest from "the 26th day of February 1880, within ninety days "from the date of the entry hereof, the interest thereon "being six per cent.; and that thereupon said James R. "Doolittle convey to said Susie M. Kerr, Rosa L. Kerr, "and Joseph B. Kerr, executors, etc., the undivided one-"fourth of the south one-half of fractional section thirteen "(13), township thirty-eight (38) north, range fourteen "(14) east, in Cook county, Illinois, as held by him as "trustee; and it is further ordered, adjudged and decreed "that if said Susie M. Kerr, Rosa L. Kerr, and Joseph "B. Kerr, executors, etc., shall fail to make such payment "within the time so fixed as aforesaid, then the said "South Park Commissioners shall pay into court the sum "of three thousand four hundred and fifty-four dollars "and seventeen cents ($3,454.17), for the use of said "Susie M. Kerr, Rosa L. Kerr, and Joseph B. Kerr, ex-"ecutors, etc., together with eight per cent. interest "thereon, from the 26th day of February, 1880, and the "proper deposit charges thereon; and thereupon said "James R. Doolittle shall convey to said South Park Com-"missioners said undivided one-fourth part of the south "half of fractional section thirteen (13) aforesaid, held by "him as trustee, who shall thereupon hold the same dis-"charged of the encumbrance created by the trust deed "of Daniel P. Rhodes to Daniel Jones, trustee aforesaid; "but if said South Park Commissioners fail to make such "last mentioned payment within ten days after the expir-"ation of said ninety days, and the failure by defendants "Kerr to pay said corporation as aforesaid, then this bill "shall stand dismissed at complainant's cost."

Upon the third day of October, A. D. 1882, the de-

fendants Kerr perfected their appeal to this court, the ninety days provided by the decree within which the Kerrs were to repay the money and interest, running out upon the 24th day of November, A. D. 1882, and thereupon on the first day of December, A. D. 1882, and within the ten days given to the South Park Commissioners for that purpose by the decree, they paid into court the sum of four thousand two hundred and sixty-two dollars and forty-two cents ($4,262.42) being the sum of three thousand four hundred and fifty-four dollars and seventeen cents ($3,454.17), with interest at eight per cent. up to the date of such payment from the 26th day of ~~November~~ July, A. D. 1880, and the proper deposit charges in addition; and an order was accordingly entered in said court on that date that the money had so been paid into court by the South Park Commissioners. The reason that the decree provided for this payment by the South Park Commissioners was that the amount of money belonging to the corporation which had come to the hands of the Kerrs, viz: ninety thousand dollars, did not equal by that sum the amount paid to Mrs. Dobbins and the amount of the Dobbins encumbrance with interest. Judge Drummond seemed to be desirous that the Kerrs should have no cause of complaint on that score, and the South Park Commissioners took no exception to that action. The amount paid for the Dobbins title, subject to the encumbrance in 1879, was twenty-one thousand dollars ($21,000). The amount paid by the South Park Commissioners, was $90,000, but of that what Mr. Dunlevy got hold off was seven thousand two hundred dollars ($7,200), besides fifty-nine thousand nine hundred dollars ($59,900), which were the proceeds of the discounts at the National Bank of Illinois; but out of the $7,200 Dunlevy

paid for the assignee's and receiver's deeds one hundred dollars, or fifty dollars apiece, so that he received in round numbers sixty-seven thousand dollars ($67,000), and the money of the South Park Commissioners also paid the twenty-one thousand dollars ($21,000), to obtain the Dobbins title. The Dobbins notes amounted to $50,000, with interest at eight per cent., and interest had been paid upon them to the Kerrs up to June, 1874. Calculating the interest on those notes from June, 1874, to May 15, 1879, when the $59,900 was received, the total amount, with interest added, was sixty-nine thousand eight hundred and thirty-three dollars and thirty-three cents ($68,833.33). Deducting from this sum, not the face of the Nixon and Curry notes, although it would have been perfectly proper to do so, but the amount received by said Dunlevy ($59,900) there was left nine thousand nine hundred and thirty-three dollars and thirty-three cents ($9,933.33), and interest being calculated on that sum up to February 26, 1880, when the $7,200 was paid, there resulted the sum of ten thousand five hundred and fifty-four dollars and seventeen cents ($10,554.17), subtracting from which the sum of seventy-one hundred dollars ($7,100), which was the net sum obtained by Dunlevy after he had paid one hundred dollars for the assignee's deeds, it left the sum of three thousand four hundred and fifty-four dollars and seventeen cents ($3,454.17) due upon the Dobbins mortgage on the 26th day of February, 1880, if the mortgage had not been parted with for less than its face. So Judge Drummond, upon the basis of those figures, allowed the Kerrs $3,454.-17, as a matter of equity, although in fact the Dobbins notes had really been extinguished by the transaction. This put upon the South Park Commissioners all the

interest paid to the bank, and all that was paid in acquiring the Dobbins title.

Mary C. Dobbins purchased one-fourth of the tract and her title was obtained and placed in the trustee, and the incumbrance thereon paid off by use of South Park money, which being trust funds, the South Park Commissioners could follow it into the land.

The evidence shows that the purchase was made by Mr. Dobbins for Mary C. Dobbins, his wife, on the 12th day of October, A. D. 1872. The conveyance is to be found on page 57 of the printed record, and was made, as appears from the oral evidence in the case, to Daniel P. Rhodes, as a mere matter of convenience. Rhodes resided in Ohio, and the conveyance was made to him, so that in case of litigation, Rhodes, being a non-resident of Illinois, might bring suit in the United States court. He conveyed to Mrs. Dobbins November 26, 1872, but that deed was not recorded until April 16, 1876. (P. Rec., 59.) By the deed of Kerr to Rhodes (P. Rec., 57), Kerr conveys, not his "right, title and interest," but "all that part, tract or parcel of land "described as follows, to wit: being the undivided fourth "part of the south half of fractional section thirteen "(13), town thirty-eight (38), north of range fourteen "(14), east, in Cook county, Illinois, save and except the "north one-third of lot three (3) and excepting also lots nine "(9), ten (10), eleven (11), fifteen (15) and sixteen (16) "in C. B. Phillips' subdivision of the western part of said "half section, together with all and singular the tene-"ments, hereditaments and appurtenances thereto belong-"ing, etc." And the deed contained the following covenant: "And the said William P. Kerr, for himself, his

" heirs, executors and administrators, do hereby covenant, " promise and agree to and with the said party of the " second part (his) heirs and assigns, that he has not made, " done, permitted or executed any act or acts, thing or " things whatsoever, whereby or by means whereof the " above mentioned and described premises, or any part or " parcel thereof, now or at any time hereafter, shall or " may be impeached, charged or encumbered in any man- " ner or way whatsoever."

The answer set up that the tract of land in question contained two hundred and twenty-four acres, but no proof was adduced to sustain the allegation; on the contrary, the South Park Commissioners proved by J. F. Foster, their engineer (P. Rec., 188), that in 1870 the acreage was one hundred and ninety-four acres, (the government survey having been one hundred and ninety-six acres). That fact was established in case 1,142 on the calendar of this court, and was thereupon agreed to by stipulation. Assuming the tract to have contained one hundred and ninety-four acres, the deed of Kerr to Rhodes excepted five one-acre lots and the north one-third of an acre lot. Deducting this five and one-third acres leaves one hundred and eighty-eight and two-thirds acres, one-fourth of which, or forty-seven and one-sixth acres, was purchased by Mrs. Dobbins and conveyed to her by the deed aforesaid; and inasmuch as Kerr warranted as aforesaid, if any part of the title to the whole tract failed by reason of any omission or commission of his own, he was bound to make his warranty good to the extent of forty-seven and one-sixth acres. As it turned out, Kerr lost eighty acres by reason of his own acts in selling the property on execution in violation of the Homestead Laws of the State of Illinois, and Mrs. Dobbins was therefore

entitled, not to one-fourth of the remainder, but to a number of acres equal to one-fourth of the whole, viz., forty-seven and one-sixth acres.

Mr. Dobbins testifies (P. Rec., 195), that Mrs. Dobbins "always claimed one-fourth of the fraction, which "Dunlevy represented was two hundred and seventeen "acres. She claimed she bought one-fourth of that, and "if it was all lost but that, she claimed that."

In *Beach* v. *Miller*, 51 Ill., 211, the Supreme court holds that the fact that either or both parties know at the time the covenant is made that the grantor has no title in a part or in any of the land, does not affect the right to recover damages for its breach; and in *Wadhams* v. *Innes*, 4 App. Court (Illinois) Reports, 646, this is approved, and it is said that in actions for a breach of the covenant of seisin, where the title to the whole tract has failed the measure of damages is the consideration paid for the land and six per cent. interest. Where the title fails as to a part only and the purchase money paid for such part can be ascertained, such purchase money and interest is also the measure of damages, but where the title fails to a part of a tract which has been sold for a gross sum, and the consideration paid for such part cannot be separately ascertained, the measure of damages is the relative value of the land to which the title has failed, as compared with that which is valid in proportion to the price paid for the whole. And in the same case reported under the title of *Wadhams* v. *Swan*, 109 Ill., 46, that ruling is affirmed, and the Supreme court held that the grantee is entitled to an action upon a warranty of title, although he may have known at the time of the defect in the title. Whether we treat failure of title as to be compensated in land, that is to say, that Mrs. Dobbins was entitled to an undivided

one-fourth, if so much land remained to the Kerrs as would give her that quantity, or that she was entitled to receive the consideration and interest or the price ultimately realized, and interest, on the appropriation of the land, makes no difference in this case. Although not shown, it is a fact that at the time of this sale of Kerr to Mrs. Dobbins, the whole title was in litigation in the case in which Judge Harlan pronounced the decree (which was introduced in evidence in this case, but the whole record was not), and, therefore, the deed was nothing more or less than an assignment of so much of the proceeds of that litigation as equaled an undivided one-fourth of the whole tract, and the covenant operating as a warranty that by no act of Kerr, either of commission or omission, that share of proceeds would be any less than the proceeds of forty-seven and one-sixth acres, the result is that the South Park Commissioners became entitled either to the forty-seven and one-sixth acres or to so much of the valuation of the whole tract as equaled the proportionate valuation of forty-seven and one-sixth acres thereof. This question is, however, of no importance in the case at bar, but should be considered in No. 1,142 upon this docket, which is the case of the appeal from the decree of the chancellor based upon the verdict of the jury as to the value of so much of the entire tract as was found to belong to Kerr.

The evidence disclosed certain negotiations between Messrs. Morgan, Dunlevy and R. S. Thompson and others, which resulted in the preparation of the proposed contract annexed to Morgan's answer, which does not seem to be in the record, but the proposed agreement will be found set out on page 135 of the printed record. Assuming that the negotiations were carried forward

in good faith—a violent assumption in view of the statements in Kerr's answer—nevertheless, it is conceded in this case upon the face of the pleadings, including Kerr's answer and that of Ingalls, and that of Kerr's executors, that the proposed contract was to be no contract unless adopted by the board of South Park Commissioners (which indeed was of course the only way to make it binding), and it is conceded that it never was adopted or entered into by the corporation, and that Thompson was never authorized to sign it. Kerr did not seek to enforce that contract. He filed no cross bill for specific performance. He set up and relied on no adoption of it by the South Park board. He repudiated it and did not wish to be considered as bound by it. He contended that when the ninety thousand dollars was paid, it was paid upon a parol agreement between him, Morgan, Sherman and Walsh, as individuals; that when the contract fell through the money was to be considered as a payment on account of what might be coming to Kerr in the case of *Kerr* v. *The South Park Commissioners*, decided by Judge Harlan.

R. S. Thompson testifies (P. Rec., 92): "The com-
"missioners, so far as my knowledge goes of their action,
"never did formally adopt the contract that I have re-
"ferred to as attempted to be made between Mr. Kerr
"and the commissioners, and it was the understanding
"distinctly made by Mr. Dunlevy, as attorney-in-fact of
"Mr. Kerr, that in this transaction if anything should
"occur by which that contract should not be formally
"adopted by the commission, that then, and in that event,
"whatever sums were advanced by the commissioners in
"any of these transactions should stand as a payment to
"Mr. Kerr on the title that he might have in the south
"half of said fractional section thirteen; said payments

"should bear interest at the rate of six per cent. from the "time they were made by the said commissioners."

Dunlevy testified (P. Rec., 228): "That in the event the park commissioners, as a board, should not carry out this contract, or if, for any reason, it should fail to be adopted, then any money they might advance to take up the notes which the bank had discounted, should stand as so much advanced payment to Kerr on the amount he might ultimately be entitled to receive for his interest in this land, according to the terms of the decree entered by Judge Harlan in the case of *Kerr* v. *The South Park Commissioners*, and should bear six per cent. interest from the date the park board should so take up the paper from the bank." And further (P. Rec., 229): "The agreement was at the beginning, and all the time "during the summer and fall of 1879, that if the board "should fail to adopt the contract, then the $90,000, or "any sum they may have advanced in view of its being "adopted, should stand as an advanced payment for his "whole interest in this land, and they should credit them-"selves on the purchase money, and he, Kerr, be charged "with the amount as received in part payment for his "interest in the whole half section, with six per cent. in-"terest from the date they should take up these securi-"ties or pay any money under this proposed contract."

The park commissioners were James Morgan, John R. Walsh, John B. Sherman, Paul Cornell and Cornelius Price; their secretary was H. W. Harmon. The records of the meetings of the South Park Commissioners do not show the adoption of the contract, and all the commissioners concur that it was not adopted by the board.

Mr. Price testifies as follows (P. Rec., 209):

"Some time in the fore part of November, 1879, Judge "Dunlevy called at my house; I think, he called there "four or five nights in succession with what you call the "attempted contract—it was in pencil—and read it over "to me, and I made the same objection, and he came "again with some alterations that he said he would make, "and finally the last time I told him I didn't think I could "agree to any such contract, and the proper place to pre- "sent it would be to the board. I didn't want to do busi- "ness outside of the board in a matter of that kind where "there was so much money involved. He then requested "me to meet him at Mr. Walsh's at a subsequent even- "ing, I don't recollect the date. I told him I would, and "I did. There he presented the same contract to Mr. "Walsh and myself for our approval, and I believe I "raised some objection, or Walsh did.

"Q. Mr. Walsh did?

"A. Yes, sir; both of us. I then told him I could not "sign such a contract, and I think Mr. Walsh said he "could not agree to it. The next thing I heard of it was "when this contract was presented to the board on the "21st of November, 1879; that is the first I saw or heard "of the contract. I presume the pencil contract the judge "had was similar to this. I could not state from memory "whether it was or not.

"Q. Similar to the one presented on the 21st of No- "vember, 1879?

"A. Yes, sir; at the time he presented it to me I "knew nothing about this contract being in existence. He "made a request of me not to mention it to certain mem- "bers of the board. He thought he could get Walsh,

"Sherman and myself to agree to it, but he didn't want "Thompson and Kales, the attorneys, should know any- "thing about it.

"Q. He didn't wish Mr. Morgan to be informed "about it?

"A. He didn't wish Morgan, Cornell, and Kales or "Thompson; he mentioned their names.

"Q. At the time the proposed contract was pre- "sented, which you remember to be the 21st of Novem- "ber, 1879, do you remember whether Mr. Walsh was "present?

"A. Mr. Walsh was present at the meeting that day.

"Q. But at the time?

"A. I could not exactly say.

"Q. What was done with it?

"A. The contract was read before the board, and, I "think, I moved to have it laid over so I could look into "it, and it was laid over.

"Q. Did you ever agree to that contract?

"A. I did not.

"Q. Was it ever passed upon by the board as a "board while you were a member of it?

"A. It was not."

It is unnecessary, however, to quote from the evidence, inasmuch as it was conceded before Judge Drummond that there was no contract. Therefore it followed that ninety thousand dollars of the South Park money had come to the hands of Kerr, and, inasmuch as that money was trust money, Kerr was bound to return it or the South Park Commissioners were entitled to at least hold the land until the money was returned. Nothing is better settled than that where trust money is traced the

cestui que trust may claim either the property purchased or the money.

Oliver v. *Piatt*, 4 Howard, 401.

The money of the Park was trust money. The corporation could claim either the property bought with it, to wit, the Dobbins interest, or the return of the money. No return was tendered or proposed by Kerr, yet Kerr and Dunlevy must be held to have understood the law upon the subject. It was a risk that Kerr and Dunlevy ran in the whole operation that if it broke down, a court of equity would apply to it the rules of equity, and that the South Park corporation would get the benefit, according to the settled rules of law, of that which its money had purchased, if the corporation took that view of it and claimed the proceeds into which their money had been transmuted. Of course the record discloses throughout a persistent attempt on the part of some of the defendants to force this contract on to the corporation, and to put the corporation in an embarrassing position if the contract should not be consummated. Of course the record discloses numerous attempts to obviate the application of the rules of resulting and other implied trusts, but these efforts are so transparent that in a court of equity they ought to be brushed away as the merest cobwebs. The truth of the transaction is, that Kerr-Dunlevy wished to collect the Dobbins mortgage. He also wished, if he could, to make use of the South Park Commission to obtain a title that he did not have; he wished, if he could, to obtain an arrangement by which eighty acres which Judge Harlan had decided Kerr did not own, could be put into the same pool and treated as if he owned it, which he did not. He also wished the number of acres to be put higher than

the government survey showed it to be. The pretended contract named the number of acres as two hundred and twenty, when in fact there were but one hundred and ninety-four, and the government survey had shown but one hundred and ninety-six. By this alleged contract Kerr-Dunlevy undertook to get an arrangement with the South Park Commissioners to pay him for twenty-six acres more land than there was, with the interest on it from the 27th day of August, 1870, amounting at the time of the transaction, under the terms of the pretended contract, to over eighty thousand dollars. These things are all obvious on the face of the record, but they none of them conduce to a belief on the part of any just chancellor that Kerr occupied an equitable position and ought to be protected. The negotiations on the part of Dunlevy were not commendable. The view which he takes of the method in which contracts should be entered into with public boards is not one that a court of equity can by any possibility favor. So convinced is he of the propriety of attacking the members of a public board, outside of the board, and in detail, that it is actually set up in Kerr's answer, filed in this case, that "In the beginning of such "negotiations it was agreed that the same should be con- "ducted with said members (being a majority of said "board), alone, and that everything touching the same "should, for good and sufficient reasons, which will be "developed upon the trial of this cause), be kept secret "from Cornelius Price, one of said park commissioners, "until a conclusion should be reached, and the whole "matter brought before the entire board for adoption." What these reasons are, or that there were any, was not developed in the evidence. It is impossible that there could be any reasons which would justify a person seek-

ing to make a contract with a board charged with a public trust in concealing from any member of such board that the negotiations were going on. No matter what the agreement was with some of the South Park Commissioners as to what was to be done with the money in case no contract was made, the fact remains that it was South Park money, and a trust fund, and the question before Judge Drummond was, what is the legal result of the receipt of the moneys belonging to the South Park corporation? He decreed that the Kerrs might return the money within ninety days, and if they did so, then the Dobbins interest should be conveyed to them. If they did not do so, then the South Park Commissioners should pay the $3,454.17, and interest, and the property should be conveyed to the corporation. Whether or not the appeal in this case, suspended the running of the ninety days, is a question. The South Park Commissioners, assuming that the ninety days was still running, paid the $3,454.17, and interest, and the deposit charges within the ten days allowed to them, as I have said, and became entitled to the deed. It is impossible to understand how Judge Drummond could have entered any other decree, or why Kerr should be allowed, without repaying the money, to assert title to the Dobbins forty-seven and one-sixth acres.

Judge Drummond might well have decreed that the 47⅙ acres belonged to the South Park Commissioners absolutely, since it was their money that purchased it.

Kerr paid nothing for it, but he argued that the money was obtained, not of the South Park Commissioners, but of the bank. In other words, that Kerr borrowed the money of the bank, although he gave no obligation to re-

pay it, and made the investment, and although the money was returned by the South Park Commission—yet, nevertheless, in legal effect, it was Kerr's money that paid for the conveyance, and then that the corporation reimbursed Kerr as a payment on account of a purchase of the same land from Kerr. In other words, the position taken on behalf of Kerr was that the court ought to decree that the South Park corporation advanced the money of the public to buy a title for Kerr, which they were obligated to purchase back from him at any price a jury might thereafter fix as its value. It would be a monstrous breach of trust, if it were true, that the South Park Commissioners, having no private interest in this, or any other transaction relating to the acquisition of land for the park, charged simply with the discharge of public duties, were held to have been engaged in buying land for other people to sell back to them at an advance. Yet that is the position which was taken on behalf of the defendant, Kerr. The facts are that the $21,000 paid to Mrs. Dobbins and her attorneys for her conveyance, was raised at the National Bank of Illinois, on Nov. 14, 1879, on which day the deed was delivered upon the assurance of the South Park Commissioners, Walsh, and, perhaps, Morgan, that it was a South Park transaction, and that that corporation would repay the advance. The money was not advanced to Kerr, nor to Dunlevy, nor to Bennett. It was advanced to the South Park Commissioners, Walsh, and, perhaps, Morgan, and it was the credit, not of those gentlemen, good as their credit might be; it was the credit of the South Park Commission as a corporation which the bank understood to be morally pledged to take up the Bennett note. Inasmuch as the South Park Commission *did* take up the Bennett note, the transaction was precisely the

same as if $21,000 had been paid down by the corporation to Mrs. Dobbins on the 14th day of November for her deed. It is certain that the South Park Commission did not advance the money to Kerr. It is certain that the bank advanced no money to Kerr. It is certain that the South Park Commission had no power to loan money to Kerr or anybody else, or to invest trust funds in any other way than in the absolute purchase of title to the land. If the South Park Commission had not paid the $21,000, and if Mr. Walsh had been compelled personally to respond on his guaranty to the bank, would not Mr. Walsh have been entitled to claim that the Dobbins property belonged to him? It would have been his money that would have paid for it—not Kerr's money. It would not have been a loan by him to Kerr; it would not have been a loan by the bank to Kerr; it would have been a loan by the bank upon the credit of Walsh; and all the authorities agree that a trust will result in favor of the person upon whose credit the purchase is made, as well as of a person with whose money the purchase is made.

Granted that the transaction grew out of the attempt to make an agreement with Kerr, which fell through; granted that there were no circumstances of suspicion concerning such attempted agreement, still the fact remains that Kerr did not pay for the land, and that it was not contemplated in any of the negotiations between these different people that Kerr should pay for the land with his own money; and it is certain that it was not on his credit that the money was obtained and paid. The evidence discloses that the only effect the attempted agreement had was one prejudicial to the commission, inasmuch as the commission might have purchased directly from Mrs. Dobbins for less, but evidently did not do so because

members of the board were mixed up in this objectionable transaction with Dunlevy. Had nothing passed between that person and members of the South Park board, outside its regular session, there can be no doubt that the Dobbins title could have been procured, and the encumbrance extinguished, at much less than $90,000, but that was not done owing to the manipulations of Kerr's agent in the attempt to get this corporation tangled up by entering into these stipulations with him. Now, could the court decide that Walsh, in giving the assurance to the bank, was acting as the agent of Kerr? Could it decide that Walsh was acting as the agent of Dunlevy, or that the South Park Commission was acting as the agent of either Kerr or Dunlevy in paying the money to purchase the Dobbins title?

And it may be further remarked that Mr. Walsh and Mr. Price, two of the commissioners, confirmed also by Mr. Sherman, if his evidence be examined carefully, as to the effect of the vote to appropriate the $90,000, state that they voted upon the belief, and the assurance of Mr. Thompson that the money was to be paid out in absolute purchase of the Dobbins title, and the extinguishment of the encumbrance thereon. I repeat, three of the five commissioners understood that the actual title to forty-seven and one-sixth acres of the tract in question was secured, free from the Dobbins incumbrance, by the payment out of the park money of the sum of $90,000.

The resolution of November 21, 1879, was drawn by Mr. Thompson. He was the contracting party with Dunlevy. Granting that he believed the attempted contract to be one for the best interests of the South Park Commission (and he would complain if that concession were not made), he, therefore, in all that he was doing, was acting with reference to having that contract con-

firmed, and inducing the South Park board, as such, to make it. The resolution reads as follows:

"Resolved, that the president of this board is hereby "authorized to make such settlement and adjustment of "the litigation regarding the south half of fractional Sec. "13, 38, 14, and such purchase of the title thereto as, in "his judgment, may be advisable, and for that purpose "to draw upon the treasurer of this commission a sum, "not exceeding the sum of $90,000, before reporting the "same to this board, and that the auditor is hereby in- "structed to sign the necessary warrant for said sum of "money, or so much thereof as called for."

There seems to be universal concurrence that this resolution was not intended to operate as a ratification or confirmation of the attempted contract. On the contrary, it is said that that document was laid over at the very meeting at which the resolution was adopted, without action, in order to allow commissioner Price, who had been kept in ignorance of the proceedings up to within a few days of the meeting of Nov. 21, to examine it. It would, of course, be a contradiction in terms to say that after a proposed contract was laid over for examination, the board by passing a resolution, apparently *diverso intuitu*, should confirm that which was so held up for further inquiry. Nor is the question material, inasmuch as Kerr repudiates the contract, and insist it was not binding upon him, and that it was never entered into. But the resolution itself bears no such construction. It was a resolution for a settlement and adjustment *by purchase of title*, and entirely consistent with the purchase of the Dobbins title, which was what Walsh, Price and Sherman supposed it was passed to effect. Authority to buy all includes authority to buy a part. And all the commissioners agree that it had relation solely to the Dobbins title *as the subject mat-*

ter of the advance. It is not pretended by either of them that it had relation to any title of Kerr. In the judgment of a majority of the commission the money was to be used for the acquisition absolutely of the Dobbins title. In the course of the proceedings, it has been intimated that this resolution authorized Morgan to buy the entire tract of Kerr and pay the money on account of that, but indulgence in that argument cannot be permitted, in view of the fact that he did nothing of the kind, and was not by the resolution authorized to do anything of the kind, and in view of the repeated disclaimers in the pleadings, and in the evidence, and in the argument, that there is any contract existing for the purchase of the Kerr interest at all. Under that authority to purchase title, the Dobbins title was bought. It is true the conveyance to Ingals was made seven days before, but it was made, as I have said, on the promise of Walsh that the money should be paid by the park board, as it was.

The decree of Judge Drummond was intended simply to secure the South Park trust funds. They could not be perfectly secured by decreeing in that case that the money was received on account, since it was impossible then to know whether Kerr-Dunlevy would have any claim whatever on the proceeds to be ascertained in the main case, and it was therefore essential that the lien of the South Park Commissioners upon the $47\frac{1}{8}$ acres should be definitely declared.

Upon the whole record it is not apparent why the decree should be reversed.

Respectfully submitted.

MELVILLE W. FULLER,
For South Park Commissioners.

POSTSCRIPT.—Friday, January 15, 1886. I have just received my brother Isham's brief in this case, and to his assignment of error in this that the decree was "in effect "the foreclosure of a mortgage lien," etc., I answer that he is wholly mistaken. The transaction, as already explained, was simply the acquisition of the Dobbins title, and the paying off of the encumbrance upon it with trust funds which Judge Drummond followed into the land.